

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

UNITED STATES OF AMERICA,

Plaintiff,

VS.

CR. NO. 15-4268 JB

ANGEL DELEON, et al.,

Defendants.

Transcript of Motion Proceedings before
The Honorable James O. Browning, United States
District Judge, Albuquerque, Bernalillo County,
New Mexico, commencing on October 4, 2016.

For the Government: Ms. Maria Armijo; Mr. Matthew
Beck; Mr. Randy Castellano

For the Defendants: Mr. Brock Benjamin; Ms. Cori
Harbour-Valdez; Mr. Patrick Burke; Mr. Jim Castle;
Mr. Robert Cooper; Mr. Dean Clark; Mr. James Lahann;
Mr. Orlando Mondragon; Mr. Noel Orquiz; Mr. Nathan
Chambers; Mr. Billy Blackburn; Mr. Jerry Daniel
Herrera; Mr. Pedro Pineda; Mr. Jack Mkhitarian; Mr.
Larry Hammond; Ms. Margaret Strickland; Mr. Steven
Almanza; Ms. Mary Stillinger; Ms. Amy Jacks;
Mr. B. J. Crow; Mr. Marc Lowry; Ms. Amy Sirignano;
Mr. Michael Davis; Mr. Doug Couleur; Mr. Santiago
Hernandez; Mr. Ryan Villa; Ms. Justine Fox-Young; Mr.
Donovan Roberts; Ms. Erlinda Johnson; Mr. Keith
Romero; Ms. Angela Arellanes

For the Defendants via phone: Mr. Chris Adams; Mr.
Gary Mitchell

1 THE COURT: Good morning everyone. I
2 appreciate almost everybody being here. We'll try to
3 work through that here in a minute.

4 All right. The Court will call United
5 States of America versus Angel DeLeon, Criminal
6 Matter No. 15-CR-4268 JB.

7 If counsel will enter their appearances for
8 the Government.

9 MS. ARMIJO: Good morning, Your Honor.
10 Maria Armijo and Randy Castellano and Matthew Beck on
11 behalf of the United States.

12 THE COURT: All right. Ms. Armijo, Mr.
13 Castellano, and Mr. Beck, good morning to you.

14 Let's see. For Defendant Edward Troup?

15 MS. HARBOUR-VALDEZ: Good morning, Your
16 Honor. Cori Harbour-Valdez and Pat Burke on behalf
17 of Edward Troup. And we're ready to proceed.

18 THE COURT: All right. Ms. Harbour-Valdez,
19 Mr. Burke, good morning to you.

20 Let's get Defendant Joe Lawrence Gallegos.

21 MR. BENJAMIN: Good morning, Your Honor.
22 Brock Benjamin on behalf of Mr. Gallegos.

23 THE COURT: Mr. Benjamin, good morning to
24 you.

25 And for Defendant Leonard Lujan?

1 MR. CLARK: Good morning, Your Honor. Dean
2 Clark on behalf of Mr. Lujan.

3 THE COURT: All right. Mr. Clark, good
4 morning to you.

5 And for Defendant Billy Garcia?

6 MR. COOPER: Good morning, Your Honor. Bob
7 Cooper and Jim Castle for Mr. Garcia.

8 THE COURT: All right. Mr. Cooper,
9 Mr. Garcia, Mr. Castle, good morning to you.

10 And for Defendant Eugene Martinez?

11 MR. COULEUR: Good morning, Your Honor.
12 Doug Couleur for Eugene Martinez.

13 THE COURT: All right. Mr. Couleur, Mr.
14 Martinez, good morning to you.

15 And for Defendant Allen Patterson?

16 MR. LAHANN: Good morning, Your Honor.
17 Jeff Lahann on behalf of Mr. Allen Patterson.

18 THE COURT: All right. Mr. Lahann,
19 Mr. Patterson, good morning to you.

20 And for Defendant Christopher Chavez?

21 MR. MONDRAGON: Good morning, Your Honor.
22 Orlando Mondragon on behalf of Mr. Chavez.

23 THE COURT: Mr. Mondragon, Mr. Chavez, good
24 morning to you.

25 And for Defendant Javier Alonso?

1 MS. ORQUIZ: Noel Orquiz and Nathan
2 Chambers for Mr. Alonso.

3 THE COURT: All right. Mr. Orquiz,
4 Mr. Chambers, Mr. Alonso, good morning to you.
5 For Defendant Arturo Arnulfo Garcia?

6 MR. BLACKBURN: Good morning, Your Honor.
7 Billy Blackburn on behalf of Mr. Garcia.

8 THE COURT: Mr. Blackburn, Mr. Garcia, good
9 morning to you.

10 And for Defendant Benjamin Clark?

11 MR. HERRERA: Good morning, Your Honor.
12 J.D. Herrera here for Mr. Clark. My co-counsel,
13 Steve Foster, is in trial in Las Cruces.

14 THE COURT: All right. Mr. Herrera, Mr.
15 Clark, good morning to you.

16 And for Defendant Reuben Hernandez?

17 MR. PINEDA: Good morning, Your Honor.
18 Pedro Pineda for Mr. Hernandez.

19 THE COURT: Mr. Pineda, Mr. Hernandez, good
20 morning to you.

21 Did Mr. Mitchell come on the phone?

22 MR. MITCHELL: I have been, Your Honor.
23 Gary Mitchell on behalf of Mr. Armenta.

24 THE COURT: All right. Mr. Mitchell, I
25 expected -- and all counsel are here in the

1 courtroom. If they had second counsel, I was
2 allowing them to have second counsel in the
3 courtroom. But I didn't excuse any counsel from not
4 being present with their defendant. Is there a
5 reason you're not here today?

6 MR. MITCHELL: Judge, I just finished jury
7 selection in Clovis, Your Honor. I'm sorry.

8 THE COURT: Well --

9 MR. MITCHELL: And I should have made it --
10 you know, it was my mistake, my apologies. Nobody's
11 fault but mine.

12 THE COURT: All right. Mr. Mitchell,
13 Mr. Armenta, good morning to you.

14 THE DEFENDANT: Good morning.

15 THE COURT: For Defendant Jerry Montoya?

16 MS. STRICKLAND: Good morning, Your Honor.
17 Margaret Strickland and Larry Hammond for
18 Mr. Montoya.

19 THE COURT: All right. Ms. Strickland, Mr.
20 Hammond, and Mr. Montoya, good morning to you.

21 And for Defendant Mario Rodriguez?

22 MR. HERNANDEZ: Good morning, Your Honor.
23 Santiago Hernandez on behalf of Mr. Rodriguez.

24 THE COURT: All right. Mr. Hernandez, Mr.
25 Rodriguez, good morning to you.

1 For Defendant Timothy Martinez?

2 MR. ALMANZA: Good morning, Your Honor.

3 Steve Almanza on behalf of Timothy Martinez.

4 THE COURT: All right. Mr. Almanza, Mr.
5 Martinez, good morning to you.

6 And for Defendant Mauricio Varela?

7 MS. STILLINGER: Good morning, Your Honor.
8 Mary Stillinger here for Mauricio Varela.

9 THE COURT: All right. Ms. Stillinger, Mr.
10 Varela, good morning to you.

11 Is Mr. Spencer on the phone, or is he --

12 MS. STILLINGER: No, I'm just handling this
13 hearing for today.

14 THE COURT: All right.

15 For Defendant Daniel Sanchez?

16 MS. JACKS: Good morning, Your Honor. Amy
17 Jacks on behalf of Mr. Sanchez. And Mr. Jewkes is
18 not present today.

19 THE COURT: All right. Ms. Jacks, Mr.
20 Sanchez, good morning to you.

21 THE DEFENDANT: Good morning, Your Honor.

22 THE COURT: Defendant Gerald Archuleta?

23 All right. He's not here.

24 For Defendant Conrad Villegas?

25 MR. CROW: Good morning, Your Honor. B.J.

1 Crow for Mr. Villegas.

2 THE COURT: All right. Mr. Crow, Mr.
3 Villegas, good morning to you.

4 And for Defendant Anthony Ray Baca?

5 MR. LOWRY: Good morning, Your Honor. Marc
6 Lowry on behalf of Anthony Ray Baca. And Ms. Duncan
7 is not here this morning.

8 THE COURT: All right. Mr. Lowry, Mr.
9 Baca, good morning to you.

10 THE DEFENDANT: Good morning, Your Honor.

11 THE COURT: For -- let's see -- Defendant
12 Christopher Garcia?

13 MS. SIRIGNANO: Good morning, Your Honor.
14 Amy Sirignano on behalf of Christopher Garcia, with
15 co-counsel Chris Adams appearing telephonically, with
16 our law clerk, Heidi Deifel.

17 THE COURT: All right. Ms. Sirignano, Mr.
18 Adams, Ms. Deifel, Mr. Garcia, good morning to you.

19 MR. ADAMS: Good morning.

20 THE COURT: For Defendant Carlos Herrera?

21 MR. DAVIS: Good morning, Judge. Michael
22 Davis on behalf of Mr. Herrera. My co-counsel, Carey
23 Bhalla, is trial in Municipal Court in Rio Rancho
24 this morning.

25 THE COURT: All right. Mr. Davis, Mr.

1 Herrera, good morning to you.

2 And for Defendant Rudy Perez?

3 MR. VILLA: Your Honor, Ryan Villa and my
4 proposed co-counsel, Justine Fox-Young, on behalf of
5 Mr. Perez.

6 THE COURT: All right. Mr. Villa,
7 Ms. Fox-Young, Mr. Perez, good morning to you.

8 And for Defendant Andrew Gallegos?

9 MR. ROBERTS: Good morning, Your Honor.
10 Donovan Roberts for Mr. Andrew Gallegos.

11 THE COURT: All right. Mr. Roberts, Mr.
12 Gallegos, good morning to you.

13 And for Defendant Santos Gonzalez?

14 MS. JOHNSON: Good morning, Your Honor.
15 Erlinda Johnson on behalf of Santos Gonzalez, who
16 appears before the Court.

17 THE COURT: All right. Ms. Johnson, good
18 morning to you. Mr. Gonzales, good morning to you.

19 For the Defendant Paul Rivera?

20 MR. ROMERO: Good morning, Your Honor.
21 Keith Romero on behalf of Mr. Rivera, who appears in
22 custody before you this morning, Judge.

23 THE COURT: All right. Mr. Romero, good
24 morning to you. Mr. Rivera, good morning to you.

25 And Defendant Shauna Gutierrez?

1 MS. ARELLANES: Angela Arellanes for Ms.
2 Gutierrez, who appears in person.

3 THE COURT: All right. Ms. Arellanes, Ms.
4 Gutierrez, good morning to you.

5 Any other counsel on the phone?

6 All right. Let me make sure I know --
7 we've got some overflow in the Vermejo courtroom.
8 Can the Vermejo courtroom hear. Mollie, can you --
9 can everyone hear over there?

10 MS. QUINTANA: Yes, we can hear you, Your
11 Honor.

12 THE COURT: All right. The U.S. Marshals
13 have requested that the attorneys not speak to other
14 defendants. You, of course, can speak to your
15 clients. But they request, for security purposes,
16 that you not speak to other defendants during the
17 course of this hearing. Anybody got a great problem
18 with that request? Everybody can abide by it? All
19 right.

20 I have about an 80-page opinion that I was
21 hoping I would get done for today that memorializes
22 everything we did in early June. I do think it will
23 be out by the end of the week. I will certainly work
24 hard to try to get that. But you will get orders,
25 and that's what I intend to get to you. So it's

1 relatively close to being finished, but I just
2 couldn't get it done for today.

3 Margaret Strickland has requested that the
4 Court take up her motion, Document 668, first.
5 Ms. Stillinger. All right. So any objections to --
6 from the defendants to taking that one up first?

7 All right. I understand that the parties
8 have --

9 MR. VILLA: Your Honor?

10 THE COURT: Yes, Mr. Villa?

11 MR. VILLA: Your Honor, I just wanted to
12 bring up a preliminary matter that I think applies to
13 all of these motions, is that there are a number of
14 officers in the courtroom from the STIU, who I think
15 are fact witnesses in some of these cases. And, as
16 we know, there is ongoing investigation being
17 conducted by them to these defendants. And I think
18 their presence during some of the argument and
19 presentation, which I know some counsel intend to
20 present some evidence and things like that, would be
21 inappropriate, given their status as fact witnesses.

22 THE COURT: Well, we certainly had that in
23 the -- some issues with that as far as the CJA
24 meeting we had afterwards. I guess this is an open
25 proceeding. It's open to the press; it's open to

1 everybody. I guess I -- what's the objection? I
2 mean, what would be the basis for excluding people?

3 MR. VILLA: I guess it's basic
4 sequestration, Your Honor. I mean, we're talking
5 about people potentially the Government may intend to
6 call either in trial or perhaps in these proceedings.
7 I don't think they're case agents. I certainly
8 understand if the Government needs their case agents
9 present. But many of these individuals are not case
10 agents. And like I said, they're fact witnesses. I
11 know, technically, the Rule of Exclusion doesn't
12 apply, we're not in trial, but I think the same
13 rationale applies.

14 THE COURT: Anybody else want to speak on
15 that?

16 MR. BENJAMIN: Your Honor, Joe Gallegos
17 would join the argument.

18 THE COURT: Well, why don't we cross the
19 bridge when we get to it. If something comes up,
20 then I can figure out what to do with it. But a lot
21 of this stuff, I guess I don't see it as so
22 evidentiary based that we can't have the additional
23 security that provides. It creates a lot of problems
24 for the Court and the logistics here.

25 If you've got something like that, you

1 might try to raise it before we all get together
2 here, Mr. Villa.

3 MR. VILLA: Yes, Your Honor. And I
4 apologize. I didn't anticipate their presence.

5 THE COURT: Well, they were here last time,
6 and you didn't raise it last time. So you raise it
7 today. So if you've got some issue like that, try to
8 raise it before today, particularly given they were
9 here last time.

10 MR. VILLA: I will, Your Honor.

11 THE COURT: All right. So if we get to a
12 point where you think that we need to exclude
13 somebody because of something that's going to be
14 said, I'll look to defense counsel to raise it at
15 that point, and then we'll figure out what to do.

16 All right. So are we going to take -- I
17 understand that y'all have been talking, and that was
18 one reason we got started a little bit late, but
19 Ms. Stillinger -- or Ms. Strickland, do you want to
20 say what's left to your motion to compel, 668?

21 MS. STILLINGER: And just for the record,
22 Your Honor, I'm Ms. Stillinger, and people always get
23 us mixed up because we have the same initials. But
24 this is Ms. Strickland's motion.

25 THE COURT: Okay.

1 MS. STRICKLAND: That's correct, Your
2 Honor. Good morning again.

3 THE COURT: Ms. Strickland.

4 MS. STRICKLAND: May I proceed?

5 THE COURT: You may.

6 MS. STRICKLAND: Your Honor, I read the
7 Government's response to my motion to compel. And it
8 seems that the Government does agree that it is
9 appropriate to release all of our clients'
10 statements. They claim to have released all of the
11 statements made March 8th and March 10th.

12 I spoke to Mr. Aoki and confirmed that we
13 do not have all of the statements. And the discovery
14 indicates that there were 13 statements taken March
15 8th and 10th, and that those statements were
16 recorded. So I would like the Court to order that
17 the Government -- and it seems that they don't oppose
18 it -- put those specific interviews from the 8th and
19 the 10th on a CD, or however they're getting it to
20 Mr. Aoki, and send it again, so that we can ensure
21 that we're complying with that basic requirement of
22 Rule 16.

23 THE COURT: Who is handling this for the
24 Government? Is this yours, Mr. Beck?

25 MR. BECK: Yes, Your Honor.

1 THE COURT: Do you have any objection to
2 making that order?

3 MR. BECK: Your Honor, I think counsel is
4 correct that it's our position we've disclosed all of
5 the statements. We asked about this, and as far as
6 we understand, the statements that were recorded have
7 been released. So, as she said, we don't oppose
8 releasing those statements because they are entitled
9 to them under Rule 16, but we've released them if
10 they exist.

11 THE COURT: Are you certain you don't have
12 them?

13 MS. STRICKLAND: Oh, I'm certain I don't
14 have them, because I spoke to Mr. Aoki about it, and
15 I reviewed the discovery thoroughly for them.

16 So I can list the names of the people whose
17 statements were missing. On March 8th, there was an
18 interview of Jerry Armenta, Mario Rodriguez, Timothy
19 Martinez, Jeffrey Madrid, Jerry Montoya, Ronald
20 Sanchez, Michael Hernandez, Daniel Sanchez, and Jason
21 Wright.

22 THE COURT: And you don't have any of
23 those?

24 MS. STRICKLAND: I believe we have
25 Armenta's and Mr. Sanchez's.

1 On March 10th, there was an interview of
2 Jerry Montoya, Jerry Armenta, and Rudy Perez. We
3 don't have any of those.

4 THE COURT: Well, how certain are you, Mr.
5 Beck, that you have released those?

6 MR. BECK: Are we talking about the
7 statements or the recordings?

8 THE COURT: Which are you talking about?

9 MS. STRICKLAND: The recordings.

10 MR. BECK: As I said, Your Honor, we're
11 happy to check into whether they exist. If they do,
12 we'll disclose them, just like we've disclosed the
13 rest of the recordings. If they don't, there is
14 really nothing we can do about that.

15 THE COURT: All right. Well, let's check.
16 And then I will order that the Government produce
17 those in 14 days. Can you comply with that within 14
18 days?

19 MR. BECK: Your Honor, we'll do our best.
20 I think that's a fair thing. Obviously, we have to
21 reach out to the State Police to get those
22 statements, but we will certainly do our best to get
23 that within 14 days.

24 MS. STRICKLAND: And just to help the
25 Government, the statements and the fact that they

1 were recorded are on pages 1603 through 1607 Bates
2 stamped discovery, and both the FBI, State Police,
3 and STIU were involved in taking them.

4 THE COURT: All right. What else from your
5 motion, Ms. Strickland?

6 MS. STRICKLAND: Your Honor, as to the
7 video, I read the Government's response to that as
8 well. Now, the discovery indicates that there is
9 video both on Pod 1A and 1B. We have only received
10 video from Pod 1A. The Government says that there is
11 no more video either from A or B. I want to make
12 sure that they have confirmed with all of the
13 investigating agencies that nobody captured those
14 videos for us.

15 MR. BECK: We have checked with New Mexico
16 Corrections Department, Your Honor, and those videos
17 from the other pod do not exist.

18 MS. STRICKLAND: So I just want to make
19 sure we check with everybody, because New Mexico
20 Corrections Department may not have preserved them
21 themselves. I want to make sure that we've checked
22 with the FBI, with the investigating State Police,
23 and with STIU about those videos.

24 THE COURT: Have you checked with those
25 three entities, Mr. Beck?

1 MR. BECK: Your Honor, the FBI was not
2 involved. I don't know that -- STIU is part of New
3 Mexico Corrections. I don't know if we've checked
4 with State Police. But I think it's fair that you
5 order that, and we will go back and do that.

6 THE COURT: All right. So I'll order that
7 you check with those three entities, and then advise
8 Mr. Strickland of what the results are.

9 MS. STRICKLAND: Your Honor, as to the
10 information that we've requested on Armenta, I want
11 to give the Court a little bit of background. The
12 case from the 2014 homicide, which are Counts 6 and
13 7, is basically going to be a swearing contest
14 between Mr. Armenta, the Government's informant, and
15 others. It is beyond dispute in this case that
16 Mr. Armenta stabbed the victim in the case, Javier
17 Molina, to death, and that that was captured by
18 video.

19 In the first statement Mr. Armenta gave, he
20 lied and said that he was not involved in the
21 homicide at all. In the second statement Mr. Armenta
22 gave, he said that he acted alone and that this was a
23 personal dispute between him and Mr. Molina, the
24 victim in the case. Then, many, many months later,
25 Mr. Armenta debriefed with both the state officials

1 and the government officials, and reached a deal
2 where he gave a story that implicated everybody else
3 in this case, and in exchange, he got a deal for 18
4 months, nine of which they agreed would be suspended.

5 So casting doubt on his story and finding
6 out what other instances Mr. Armenta may have had of
7 violence against other inmates, threats against other
8 inmates, 404(b) evidence about other times he
9 misrepresented to benefit himself would be in the
10 STIU file, and are necessary impeachment evidence for
11 all the defendants involved in that count.

12 THE COURT: So you're requesting on this
13 for what? What are you asking for?

14 MS. STRICKLAND: Well, I'm asking for
15 impeachment materials and the STIU file of
16 Mr. Armenta, the Government's informant in the case.

17 MR. BECK: Your Honor, I think that's
18 request Number 4 in her motion.

19 THE COURT: Number 4.

20 All right. Your thoughts, Mr. Beck?

21 MR. BECK: Your Honor, I think this would
22 relate to a number of the requests that -- from the
23 different motions. The United States is aware of its
24 obligations under the law with regard to impeachment
25 files -- excuse me, impeachment material. That's

1 Jencks material that the United States is not
2 obligated to disclose at this time. We've talked
3 about it, and we are open and agreeable to producing
4 the Jencks and impeachment material two weeks before
5 trial, even though our obligation is not to do so
6 until trial. We understand that, with the number of
7 defendants and the number of possible witnesses, the
8 defense will need more time with that. So we're open
9 to doing it two weeks beforehand. And I think that
10 much of the information that we're going to be
11 talking about today, many of the materials requested
12 are impeachment materials and Jencks materials. And
13 the law is clear that at this point in litigation,
14 we're under no obligation.

15 So that's two weeks before a firm setting.
16 And I believe, at this point in the trial, that's not
17 until March. So at this point, we're still six
18 months out from that date, Your Honor.

19 THE COURT: Have you done a Brady review of
20 these materials?

21 MR. BECK: Your Honor, we have done Brady
22 review of some of them.

23 THE COURT: How about the STIU file for
24 Jerry Armenta?

25 MR. BECK: Well, your Honor -- and I guess

1 this gets to many other points we'll discuss today --
2 the STIU files -- I understand defense counsel's
3 argument and contention that the United States has
4 custody and control over -- I think the Tenth Circuit
5 uses "investigation files" from state entities, state
6 agencies, other government agencies involved in the
7 investigation.

8 STIU, certainly has been involved in
9 housing these inmates. But to go through files that
10 STIU has not opened up related to this case
11 whatsoever, that are housed in a different jail
12 cells -- excuse me, the different jail compounds with
13 the different defendants, I would submit, goes way
14 beyond anything that the Tenth Circuit has said is in
15 the United States' custody and control.

16 That being said, we have -- certainly to
17 the extent that there are materials that will be
18 Jencks and Brady, and STIU used them, we understand
19 our obligations with those. And we have reviewed
20 some of those files. I think specifically with
21 regard to Jerry Armenta, we have not done a Brady
22 review of his STIU file yet.

23 THE COURT: Well, let me ask you about your
24 relationship with the Department of Corrections. I
25 would assume that it's extremely close, given the

1 nature of the charges, that the defendants were
2 conspiring to kill the Secretary. Just be very
3 truthful and frank with me: Can you basically pick
4 up the phone and get whatever documents you want over
5 there?

6 MR. BECK: To a certain extent, Your Honor.
7 The STIU files are intelligence files. And we have
8 a -- we don't have access -- we don't have the
9 open -- sort of what you would say -- a close
10 relationship -- I think you used "extremely close
11 relationship" -- we won't get into semantics -- we
12 have a close relationship with the NMCD. But there
13 are files that we have a difficult time getting our
14 hands on through them, and they have a difficult time
15 getting their hands on.

16 I mean, you know, if we're talking about --
17 we'll talk about this later -- but if we're talking
18 about all the SNM files for all the SNM members, from
19 1980 to the present day, 1999 to the present day,
20 that's 600 files. And many of them are stored with
21 the defendants in their facility or in the central
22 archive. So, not only do we have a difficult time
23 getting our hands on them, it's a process for NMCD to
24 get their hands on those files.

25 You asked me to be frank with you. And I

1 think NMCD has been very good about getting the
2 requested information. So I think with regard to
3 files, like STIU files, that may contain information
4 about the defendants or other inmates, I think if we
5 called on the phone, they would work with us to get
6 their hands on it.

7 That being said, I don't think we -- I
8 think that could overstep some boundaries at some
9 point in this case. And as we'll get to later in
10 this motion or others, particularly in this motion, I
11 think that there are proprietary procedures,
12 documents like that that weren't involved in this
13 investigation at all, and have work and proprietary,
14 you know, intelligence materials, things like that, I
15 think goes beyond what the Rules of Criminal
16 Procedure, the Due Process Clause, and we can ask of
17 them.

18 Rule 17 allows the defendant to issue a
19 subpoena. NMCD can come in and fight that fight and
20 say why they don't want to give up their proprietary
21 documents not used in this case. But I don't think
22 that the defense can skirt Rule 17 subpoena
23 requirement just by saying that they could ask for it
24 through us. So I think there needs to be a line
25 drawn there. And I think that would be a good place

1 to start.

2 THE COURT: Well, here's what I'm inclined
3 to do on these -- and I'm not cutting anybody off,
4 but I'm just telling you what I'm thinking of doing
5 on these STIU files. I'm going to deem them in the
6 possession, custody, control because it seems to me
7 that, given the nature of this case, you can probably
8 pick up the phone and get these files, to the extent
9 that they're available to anyone. But I think that
10 they probably are available. So I'm not going to
11 require any Jencks material to be produced before the
12 14 days.

13 And I'll let you argue. I'm just telling
14 you what I'm thinking here. But I am going to
15 require early Brady review of these materials by the
16 Government. So the Government needs to go in and
17 look at these files and do a Brady review. No Jencks
18 production. You've got to produce the Brady material
19 promptly, immediately.

20 Mr. Villa, you just got what you wanted.
21 I've replaced out the state people with marshals, so
22 I'll note that for the record.

23 MR. VILLA: Thank you, Your Honor.

24 THE COURT: So that's what I'm inclined to
25 do on that. And then -- you want to say something,

1 Ms. Strickland?

2 MS. STRICKLAND: Yes, Your Honor. And I'm
3 moving only under Rule 16 at this point. And Rule 16
4 does cover impeachment material. Brady and Jencks
5 aren't the only ways to get impeachment material.

6 But I will say that 14 days before trial is
7 totally insufficient to be ready for trial in a case
8 like this. And our first setting -- or the setting
9 we still have is in March. And even then, if we got
10 them now, it would be a stretch to prepare for trial
11 with this number of accused, and with such serious
12 sanctions on the line.

13 My client and many others are looking at
14 the rest of their natural life in prison. So we need
15 to make sure this case is done correctly and not by
16 surprise attack, which is what 14 days is. Fourteen
17 days before trial, you're looking at jury panels,
18 you're polishing up with expert witnesses that have
19 flown into town. You have a lot of things to do
20 besides totally recreate your cross-exams of
21 government witnesses.

22 As far as other outstanding impeachment
23 material, there are things that I have gotten from
24 the state case -- so my case was originally a state
25 prosecution -- that are not statements, that are not

1 Jencks material, that I know that the Government has
2 not produced. For example, the fact that Mr. Armenta
3 got an 18-month plea deal in his state case; there is
4 written documentation as to that. That has never
5 been turned over to me. That should have been turned
6 over under Rule 16.

7 There is a DNA analysis in my case where
8 Mr. Molina -- the victim's -- blood was found on
9 nobody besides Mr. Armenta, which contradicts his
10 story. That's information that needs to be given to
11 me under Rule 16. And DNA evidence is a perfect
12 example of the kind of materials that if you get 14
13 days before trial you are not prepared to try the
14 case two weeks days later. Because when you get that
15 kind of material, you need to hire experts to
16 potentially put on the stand, but at the minimum help
17 you with the cross-examination of the Government's
18 expert. And in the DNA case, where the only person
19 who has the victim's DNA on them is the informant, I
20 would assume the Government isn't even going to call
21 the DNA witnesses.

22 So those are the reasons I need to look at
23 the materials in advance to prepare my case-in-chief.

24 THE COURT: Well, I understand, and I
25 encourage the Government to, you know, disclose them

1 as soon as it can. But I'm not going to order them
2 to do it more than they have on Jencks material.

3 Now, if it's Brady material, if it's DNA
4 and those sort of things, and they fall into the
5 Brady category -- I'm talking about just Jencks
6 material you can wait on -- but as far as the other,
7 we'll just have to live with it. You may get a
8 continuance; it may throw everything into turmoil. I
9 understand that. But I'm not going to require the
10 Government to disclose it earlier than what they're
11 willing to disclose it, or as required by the Jencks
12 Act.

13 MR. BECK: Your Honor, one thing that I
14 should bring up at this point: With regard to the
15 state case the 15-year plea deal, we don't have that.
16 Everything that we had from the state we've disclosed
17 already in discovery, which brings up a point that we
18 had requested of all of the defendants' reciprocal
19 discovery. A lot of these materials that were just
20 discussed we haven't been provided. And so I think
21 the defense -- they're asking us for this specific
22 and additional discovery, just putting on the record
23 that we have asked a number of times, three times
24 already, for reciprocals.

25 THE COURT: Things like DNA, and those sort

1 of things, though, you understand that I'm sort of
2 saying you've got to look at those from a Brady
3 standpoint rather than look at them from a Jencks
4 standpoint?

5 MR. BECK: We understand that, Your Honor.

6 THE COURT: Okay. So those sort of things
7 I think should be produced immediately.

8 Given where I'm ruling or how I'm coming
9 out, anything else you need from the Government that
10 I can order?

11 MS. STRICKLAND: Well, we had discussed the
12 logbooks and procedures from Southern, from the
13 prison where this occurred. So the Government's
14 informant in this case gives a long story that
15 involved different people taking different actions
16 throughout the day: Looking at paperwork, passing
17 paperwork around, handing each other murder weapons,
18 giving instructions out. And so those are the kind
19 of things that if a CO was following the procedures,
20 would be logged in the book for that day. So we've
21 asked for those materials as well, which are Rule 16
22 materials. I'm not asking under Brady and Jencks.
23 And DNA, frankly, is Rule 16 material as well. It's
24 the results of testing and New Mexico State Police
25 did it -- they're the investigating agency in this

1 case.

2 THE COURT: Well, let's take the DNA,
3 what's the issue on the DNA?

4 MR. BECK: As far as I know, Your Honor,
5 this specific discovery motion didn't ask for DNA.
6 We understand that DNA evidence is subject to
7 disclosure under Rule 16. And if I'm looking at the
8 rule --

9 MS. STRICKLAND: Well, your Honor, the
10 reason I brought up DNA evidence is that I asked for
11 all impeachment evidence. And the Government said
12 that they understood their requirement to turn over
13 impeachment evidence. But I have evidence that
14 impeaches their witness' story only because I was
15 lucky enough to have a state court case.

16 THE COURT: Let me get Mr. Beck's position
17 on the DNA.

18 MR. BECK: Sure, Your Honor. Rule
19 16(a)(1)(F) says that, "Upon a defendant's request,
20 the Government must permit a defendant to inspect,
21 copy the photograph, the results, or reports, or any
22 physical or mental examination, and any scientific
23 test or experiment." So we have produced the DNA
24 reports. I think the other specific discovery
25 motions ask for -- I wish I had it. I have it

1 somewhere in front of me. But there is a lot of
2 stuff here. I think they asked for --

3 THE COURT: Well, they're asking for the
4 hard data behind the report.

5 MR. BECK: Thank you, Your Honor. Yes, I
6 think they asked for the DNA analysis, notes -- I'm
7 not a scientist -- electropherograms, and graphs.

8 THE COURT: Well, where are you on the -- I
9 understand Ms. Strickland to be saying she hasn't
10 gotten even the DNA reports.

11 MS. STRICKLAND: That's correct. There
12 have been disclosure in some other cases for other
13 counts, not mine.

14 MR. BECK: As I said, Your Honor,
15 everything that we have gotten from the State, in
16 terms of discovery in this case, we have turned over.
17 The United States will certainly go back and see if
18 the DNA was in there. And if it wasn't, we will go
19 back to the State and ask for that. But --

20 THE COURT: All right. So if the DNA is in
21 the U.S. Attorney's or the United States' possession,
22 they'll need to turn it over; right?

23 MS. STRICKLAND: It worries me a little bit
24 just to say they're just turning over what they've
25 gotten. You know, I need everything that is in the

1 investigating agency's file. And if I just didn't
2 know there was DNA, I wouldn't know to ask for it.

3 THE COURT: Well, if they didn't get
4 everything from the State, you may have to go to the
5 State to get that material.

6 MS. STRICKLAND: Well, since the state
7 agency was the investigating agency in this case, it
8 is considered in the Government's control. So I want
9 not only the DNA evidence, I --

10 THE COURT: I guess I'm not quite sure
11 that's true. If you've got some support as to why
12 the State DA's office in Las Cruces should be
13 considered --

14 MS. STRICKLAND: I'm sorry, I didn't mean
15 that. I meant the New Mexico State Police who are
16 the investigating agencies in this case. They are
17 the ones who sent this off to the lab. So I just
18 want to make sure that I'm getting everything, not
19 just what I happen to know is in their files, that's
20 impeachment evidence, and direct evidence in my case
21 as well.

22 THE COURT: Well, I guess -- but you're
23 talking about the case in Las Cruces, correct, or the
24 investigation?

25 MS. STRICKLAND: That's correct. So I got

1 the materials from people involved in that case, but
2 New Mexico State Police is the investigating agency
3 in that case; they're the ones who originally created
4 the DNA, or originally sent the DNA off to the lab.

5 THE COURT: Don't you need to deal with the
6 State Police and the district attorney to get those
7 materials?

8 MS. STRICKLAND: I dealt with my client's
9 attorney at the state level.

10 THE COURT: Okay. But I guess what I'm
11 saying is I don't see any obligation from the United
12 States to go get that material for you.

13 MS. STRICKLAND: Well, just to be clear,
14 the State Police are an investigating agency in this
15 case. They are the ones who originally called out to
16 the homicide, to the scene. I expect people from New
17 Mexico State Police to testify for the Government in
18 this case.

19 THE COURT: What's your position on that,
20 Mr. Beck?

21 MR. BECK: Your Honor, the New Mexico State
22 Police did investigate some of these incidents and
23 acts. Our position is that: We went out to them; we
24 asked them for their files; they produced it to us;
25 and we reviewed those and produced it in discovery.

1 I think that the defendants are taking a
2 lot from a Tenth Circuit opinion, New Mexico
3 Secretary of State case, a footnote in that opinion
4 about when files are in the custody, possession, and
5 control of the United States Government in joint
6 investigations like this.

7 As I said earlier, I certainly don't think
8 that the Tenth Circuit, in a footnote, held that all
9 of a sudden, when -- I think in this case it's two
10 years later, but a lot of these are 15 years later --
11 the United States prosecutes the case that the FBI
12 has been investigating; we have custody and control
13 and possession over all these state agencies, federal
14 agencies, different agencies' documents. That
15 certainly goes beyond what the Tenth Circuit held --

16 THE COURT: Read me the footnote you're
17 referring to.

18 MR. BECK: I'm not sure I have the case in
19 front of me. But I can get you the cite in one
20 second, Your Honor. The case is Smith versus
21 Secretary of New Mexico Department of Corrections.
22 That's at 50 F.3d Reporter; starts at page 801. The
23 pincite is page 825, Footnote 36. It's a 1995
24 decision from the Tenth Circuit. So --

25 THE COURT: Well, I'll take a look at it.

1 I'll issue an order on it. But for the present time,
2 I'm not inclined to think that the State Police's
3 files are in the United States' possession, custody,
4 or control. So I think they made a representation
5 they've turned over everything that they have. But
6 if you don't think that they've gotten everything,
7 you're going to have to go to the State Police.

8 All right.

9 MS. STRICKLAND: Thank you.

10 THE COURT: Then the other issue was the
11 video?

12 MS. STRICKLAND: Yes, and the logbooks and
13 procedures that would be within the custody of the
14 Department of Corrections.

15 THE COURT: What's your position on the
16 logbooks, Mr. Beck?

17 MR. BECK: Your Honor, so again, this is
18 something that we'll see in all these discovery
19 motions.

20 For the logbooks, in this case this was a
21 2014 incident, if I'm correct. And the request on
22 page 3 of the motion asked for copies of the logbooks
23 for the six months before and one month after March
24 7, 2014, so a seven-month time period. And we
25 disclosed the day of the murder, we disclosed the

1 logbooks from that day, because we agreed with
2 Ms. Strickland's position that that's Rule 16
3 material, so we disclosed it. But the six months
4 before and one month after is just absolutely
5 overbroad. I mean, we're talking about logbooks from
6 pods that they have 24 hours a day, they log
7 information when they're going out, when they're
8 going in. I mean, that is a huge undertaking from
9 the New Mexico Corrections Department to get their
10 hands on those books.

11 THE COURT: How many pods are there?

12 MS. STRICKLAND: There are three adjoining
13 pods. But A and B would be our focus.

14 THE COURT: What is the rationale,
15 Ms. Strickland, for seven months of logbooks as
16 opposed to the day of the incident?

17 MS. STRICKLAND: Well, the prosecution
18 always kind of wants to give just that event as if it
19 happened in a vacuum. But Mr. Armenta's second story
20 was that he and the victim in the case, Mr. Molina,
21 had ongoing disputes, and there were other things
22 going on in the pod. So we want these materials to
23 look at -- well, to review several of the statements
24 that made by Mr. Armenta to see if that's correct or
25 not, and also to potentially develop other motives,

1 there were other issues going on there, and
2 potentially other suspects who may have been involved
3 in something.

4 THE COURT: What, though, from what was
5 said in the second story -- what is it that made you
6 come up with a request of six or seven months?

7 MS. STRICKLAND: Well, Mr. Armenta wasn't
8 as precise as I would have wished in the second
9 story. So he just said that there had been ongoing
10 things. And so that's why I'm asking just for seven
11 months back. I wish that when he gave the second
12 story, we could have followed up on that, but we
13 can't.

14 MR. BECK: And, Your Honor, there would be
15 incidents that --

16 THE COURT: Let me ask Ms. Strickland one
17 more question. What kind of ongoing things are we
18 talking about?

19 (Mr. Mkhitarian entered the courtroom.)

20 MS. STRICKLAND: Well, Mr. Armenta is
21 somewhat vague in his descriptions of them. But he
22 said that he had personal issues with Mr. Molina and
23 that they had had some disputes and contentions
24 before they were together in the pod.

25 THE COURT: And what's, then, the rationale

1 for requesting material after the incident?

2 MS. STRICKLAND: I don't know if there were
3 any -- it's sort of unclear to me exactly what
4 happened to everybody afterwards. But I want to see
5 if there was any other suspicious behavior by
6 Mr. Armenta, or any others, as far as concealing
7 evidence, things like that. There were shanks found.
8 The murder weapon in this case is a shank. There
9 were shanks found later by different people
10 investigating things. So I want to find out what was
11 going on with that.

12 THE COURT: Here's what I'm inclined to do:
13 I think we can look a little bit more briefly at
14 this. Three weeks before and three days after the
15 incident.

16 MR. BECK: And Your Honor --

17 THE COURT: And I deny that without
18 prejudice. If it shows up something, or in the
19 course of the case, you think there is greater
20 justification -- but it seems to me that we probably
21 can get a pretty good feel with that. If they're
22 going to hide something, they're going to hide it
23 pretty quickly. And if there is actually something
24 that occurred, I think something within the three
25 weeks before might give you some indication.

1 MS. STRICKLAND: And, Your Honor, we had
2 also asked --

3 THE COURT: Hold on just a second.
4 Somebody dropped off the line. Are you there, Mr.
5 Mitchell? Mr. Mitchell? All right. We must have
6 lost Mr. Mitchell.

7 MS. SIRIGNANO: Your Honor, it might be Mr.
8 Adams. He had another plea to do.

9 THE COURT: Mr. Adams, are you there? Has
10 everybody got their phone on mute? Unmute and give
11 me who is on the phone.

12 MR. MITCHELL: Gary Mitchell.

13 THE COURT: Who is on the phone?

14 MR. MITCHELL: Gary Mitchell for Jerry
15 Armenta.

16 THE COURT: Oh, you're still on the phone,
17 Mr. Mitchell?

18 MR. MITCHELL: I am, Your Honor.

19 THE COURT: So Mr. Adams must have dropped
20 off.

21 All right. Ms. Strickland?

22 MS. STRICKLAND: We requested the
23 procedures for monitoring the inmates. So I would
24 ask for during that relevant time period, three weeks
25 and three days so we can see exactly what they would

1 note and what they would not note; compare that to
2 the logbooks.

3 THE COURT: Mr. Beck?

4 MR. BECK: Yeah, going back to the last
5 ruling that Your Honor is inclined to make, I think
6 that's fair. In the response brief, we've cited to
7 Hykes a number of times, in which you found that the
8 defendant demonstrated specific facts or they
9 requested information. And I think Ms. Strickland
10 has articulated that. So I think the United States
11 is okay with three weeks before and three days after
12 without prejudice.

13 Going to the procedures, as I said, Your
14 Honor, I think this is certainly the baseline line
15 for the Court to draw in terms of what documents can
16 be considered in the United States' possession,
17 custody, and control.

18 As I said earlier, Rule 17 provides the
19 defendants the ability to subpoena the New Mexico
20 Corrections Department. If they're going to ask for
21 procedures, regulations, SOPs, whatever they want to
22 call them, the United States Government isn't in a
23 position to fight that fight for the New Mexico
24 Corrections Department why they might not want to
25 turn over those proprietary documents.

1 THE COURT: Obviously, if you call and they
2 won't give it to you, you don't have to do it. But I
3 do think that it's probably worth allowing them to
4 peek at the procedures. So I'll order its
5 production, subject to -- if you tell me that they're
6 not going to allow it, then Ms. Strickland will have
7 to accept that.

8 MR. BECK: And, Your Honor, I think in
9 addition to that, I don't think it's material to
10 which they're entitled under Rule 16, or under the
11 due process clause. I understand that Rule 16 does
12 not limit the information materials to --

13 THE COURT: I guess I see it as just sort
14 of explanatory of what you're giving them. If you're
15 giving them just a little bit of the logbook, they
16 need to know how that logbook is put together. So
17 it's a little bit just standing alone, might have an
18 argument. But I think, to try to figure out how
19 these documents were put together, I think it's a
20 little bit part and parcel of the logbooks
21 themselves. So that would be my rationale for that.

22 MR. BECK: So I guess I'd ask Your Honor to
23 then clarify exactly what you're ordering us to ask
24 for.

25 THE COURT: Only the -- whatever document,

1 whether it's a guideline, policy, or whatever, that
2 tells them what procedures they used to actually make
3 the notations in the logbooks.

4 MR. BECK: Okay. I understand, Your Honor.

5 THE COURT: All right. What else on your
6 motion?

7 MS. STRICKLAND: Your Honor, the last thing
8 I have on the motion was the request for the master
9 roster. And I saw that the Government in another
10 response said that that's not what New Mexico
11 Department of Corrections calls what I'm asking for.
12 So I -- the Government had told me that they would
13 speak with the Department of Corrections about what
14 I'm actually looking for, which is a book, or a
15 memorandum about security threats against inmates.
16 And that would be based on, again, that Mr. Armenta
17 originally said that he and Mr. Molina had an ongoing
18 dispute and that was why this homicide occurred. But
19 they said they were going to check and see if that
20 existed. So I don't know if they have or not.

21 THE COURT: Well, I think on this I'm not
22 ordering the production of it. But what I'd like, I
23 think, is for you to look and see if there is
24 anything that gives any sort of indication that they
25 were having an ongoing dispute, and then I think that

SANTA FE OFFICE
119 East Marcy, Suite 110
Santa Fe, NM 87501
(505) 989-4949
FAX (505) 820-6349



MAIN OFFICE
201 Third NW, Suite 1630
Albuquerque, NM 87102
(505) 843-9494
FAX (505) 843-9492
1-800-669-9492
e-mail: info@litsupport.com

1 should be produced.

2 If it doesn't exist, tell Ms. Strickland
3 that you did the review and could not find any
4 support in whatever this master roster is, and
5 indicate that it didn't produce any sort of
6 information that's relevant.

7 MR. BECK: I understand, Your Honor. And I
8 hope we're going to get this transcript back so I
9 understand what exactly we're --

10 THE COURT: Well, I'm going to try to put
11 an order out. I almost got the one from the first
12 hearing. And I'll try to get one out on this as
13 well.

14 Anything else on your motion,
15 Ms. Strickland?

16 MS. STRICKLAND: Your Honor, I think --
17 just as to STIU files, and what is the Court's order
18 on Mr. Armenta's STIU file?

19 THE COURT: Did I understand you were going
20 to produce Mr. Armenta's?

21 MR. BECK: Mr. Armenta's STIU file? I
22 think earlier the Court's ruling on that --

23 THE COURT: Yeah, it was just do a Brady
24 review, not the entire file.

25 MR. BECK: That's what I understood the

1 Court's ruling to be.

2 THE COURT: Yeah, just do a Brady review,
3 be prepared to produce any Jencks material out of it.
4 But I'm not sure the entire file ought to be
5 produced.

6 MS. STRICKLAND: Okay. I mean, there may
7 be materials in there that are subject to disclosure
8 under Rule 16. If the Court would just order they
9 review it for that as well.

10 MR. BECK: We will, Your Honor. We
11 understand.

12 THE COURT: Rule 16, Brady.

13 MS. STRICKLAND: I think that covered
14 everything that was in my motion.

15 THE COURT: Covered everything, Ms.
16 Strickland?

17 Anything else related to that motion that
18 you need any clarification or ruling on, Mr. Beck?

19 MR. BECK: Not from the Government, Your
20 Honor.

21 THE COURT: Any other defendant have any
22 other issues on those issues?

23 Are we ready to go to the large motion that
24 has the 17 issues?

25 All right. Well, let's take that up.

1 MS. STRICKLAND: Thank you for taking my
2 motion first.

3 THE COURT: Thank you, Ms. Strickland.

4 MS. STRICKLAND: All right. So we'll take
5 up the motion for specific discovery. Who is going
6 to take the lead on this?

7 MR. CASTLE: I will, Your Honor.

8 MS. ARMIJO: Your Honor --

9 THE COURT: Yes.

10 MS. ARMIJO: May we be heard on the STIU
11 issue?

12 THE COURT: Certainly.

13 MS. ARMIJO: Your Honor, we would object.
14 This is an open court proceeding, and part of the
15 reason that they're here is not only for security
16 purposes, but also they know these defendants quite
17 well. And at previous proceedings they have noted
18 things, ongoing communications between some of these
19 defendants, ongoing what they would perceive as even
20 threats, and things that maybe the U.S. Marshals, who
21 don't know the relationships between these
22 defendants. And so they're here for a variety of
23 reasons. And so we would object to this courtroom
24 being closed to them until there is a specific
25 showing that there is an evidentiary issue that would

1 fall under the rule of exclusion. And if they
2 have -- like if they said -- we were just provided
3 today with a PowerPoint. If they have reason to
4 believe that one of the STIU gentlemen that are here
5 that authored this, and they're saying something
6 against it, that's different. But just to have --
7 generically exclude STIU from this courtroom, we are
8 opposed.

9 THE COURT: Well, let's brief it up. And
10 let's give it some thought next time. I've already
11 made the change, and the US Marshal is sitting in the
12 back. He's cooperated with me and he thinks he can
13 handle it. So I think from a security standpoint, we
14 can handle it. If you need somebody in here
15 specifically, you can tell me, and we can take it on
16 a case-by-case basis. But at least for today, let's
17 proceed as we got the courtroom configured now.

18 All right. Counsel?

19 MR. CASTLE: Yes, Your Honor. Jim Castle
20 appearing on behalf of Mr. Garcia. But I'm also
21 taking the lead for the defendants that joined in
22 that motion.

23 THE COURT: All right. Mr. Castle?

24 MR. CASTLE: Initially, I would indicate
25 that we are adopting the arguments of Ms. Strickland

1 that were made previously. And I take it that the
2 Court assumes that we're all adopting arguments
3 unless we object to them; am I --

4 THE COURT: That will be fine. We can
5 operate with that rule.

6 MR. CASTLE: Okay. Well, your Honor, I
7 don't know if the Court reviewed --

8 THE COURT: Let me see if I need to make a
9 record. We've got counsel up here sitting with
10 Mr. Armenta. Mr. Mkhitarian --

11 MR. MKHITARIAN: Yes, Your Honor.

12 THE COURT: -- I appreciate you coming
13 over.

14 So, Mr. Mitchell, I have Jack Mkhitarian is
15 in the jury box with Mr. Armenta. So he'll be
16 sitting there throughout the proceedings.

17 Thank you. I appreciate you coming over on
18 such sort notice.

19 MR. MKHITARIAN: Thank you, Your Honor.

20 THE COURT: All right. Mr. Castle?

21 MR. CASTLE: Yes, Your Honor. This
22 morning -- and I don't know if the Court got to take
23 a look at it, but there was a motion filed that was
24 actually a memorandum, Docket No. 719, that was filed
25 by Mr. Potolsky on behalf of the Defendant Mario

1 Rodriguez.

2 THE COURT: Did I get that, Ms. Wild?

3 THE CLERK: Yes, sir, you did.

4 THE COURT: All right. What's the docket
5 number on that?

6 MR. CASTLE: Number 719.

7 THE COURT: Okay. Yes, I did read that
8 this morning.

9 MR. CASTLE: And we're adopting those
10 arguments.

11 Your Honor, the way I review the law
12 regarding disclosure might be something that would
13 help the Court. The way I look at it is really three
14 layers of disclosure. At its base we have what the
15 due process clause requires, either in the Brady,
16 Giglio, Kyles progeny. The next layer, which is
17 broader, which is Rule 16. And then, finally, there
18 is a third layer, which we haven't talked about
19 today, which is -- but I think the Court has
20 exercised -- which is disclosure to the Court in its
21 supervisory power can order, because it's appropriate
22 for the particular case. And the reason I bring up
23 Document 719 is because it discussed better than we
24 did in our motion this concept of the Court having
25 authority beyond 16 and Brady. And the reason I

SANTA FE OFFICE
119 East Marcy, Suite 110
Santa Fe, NM 87501
(505) 989-4949
FAX (505) 820-6349



MAIN OFFICE
201 Third NW, Suite 1630
Albuquerque, NM 87102
(505) 843-9494
FAX (505) 843-9492
1-800-669-9492
e-mail: info@litsupport.com

1 start with that is because, if the Court in its
2 discretion orders disclosure in a particular area
3 today, then we don't even need to address the Rule 16
4 and Brady issues, because it's a broader concept.
5 And this is not -- the Court doesn't need to exercise
6 its discretion in an ordinary criminal case, because
7 Rule 16, Brady pretty much protect everybody in your
8 ordinary criminal case.

9 But this is not the ordinary criminal case.
10 This is a case that -- it probably is the largest
11 criminal prosecution in the history of this district,
12 and probably one of the largest criminal prosecutions
13 in this country at this time. And the reason that's
14 important is because, when we look at a prosecutor in
15 a normal criminal case, it's fairly easy for them to
16 identify what is Brady material, what is Giglio
17 material, what is Rule 16 material.

18 But in a case of this nature, the
19 prosecutor -- if we leave them to literally just
20 those two layers, they're going to have to figure out
21 the potential defenses of 30 defendants -- well, I
22 think it's 26 at this point -- in this case, and
23 then, you know, a score more in the related
24 indictment, 1613 indictment. They're going to have
25 to analyze literally a whole myriad of avenues that

1 they, frankly, have not been that good at analyzing
2 to date. The concept, frankly, that we're sitting
3 here 10 months into the indictment, and we're still
4 discussing areas that they're conceding they need to
5 provide to us, shows that they're not particularly
6 good so far at their obligations. And that might be
7 because of the size of this indictment, and the fact
8 that there is other investigations going on, et
9 cetera.

10 But I believe the reason this is important
11 is because the idea that they don't have access to
12 materials in the New Mexico Department of Corrections
13 is perhaps because the New Mexico Department of
14 Corrections gives what it wishes and decides not to
15 give what it wishes. Yet they have invoked the
16 jurisdiction of this federal court and the U.S.
17 Attorney's Office to attempt to charge -- well, they
18 have charged 30 defendants over a 15-year period in
19 this indictment.

20 So I start with that kind of general
21 umbrella that I think that the Court should, in this
22 extraordinary situation, order more discovery than it
23 would otherwise.

24 I'd like to address, if I could, the
25 two-week concept of the Jencks materials. You know,

1 I have here -- it's a piece of work product -- but
2 just to give the Court kind of a demonstrative
3 idea -- this document reflects entries of
4 individuals, who in the discovery that we've received
5 to date, are identified -- well, not identified, but
6 they are confidential sources without a number,
7 without any kind of indication who they are. They're
8 just -- here's a piece of information. And I
9 referenced this in the status report that I filed
10 with the Court.

11 If even 5 percent of these 330 people --
12 and let's say there are duplicates; let's say there
13 is only 250 -- if only 5 percent of those people are
14 disclosed two weeks before trial, we're just not
15 going to be in a position to do what we need to do.
16 For example, we might want to interview those
17 individuals. Their counsel needs to be contacted.
18 We need to make arrangements at a facility. Who
19 knows where that facility might be. It might be
20 somewhere else in the United States. We have to go
21 through all kinds of hoops to arrange for that. We
22 might want to subpoena, as the prosecutor has
23 suggested, under Rule 17, materials about that
24 person's background that the Government hasn't
25 collected under their Giglio obligations, but the

SANTA FE OFFICE
119 East Marcy, Suite 110
Santa Fe, NM 87501
(505) 989-4949
FAX (505) 820-6349



MAIN OFFICE
201 Third NW, Suite 1630
Albuquerque, NM 87102
(505) 843-9494
FAX (505) 843-9492
1-800-669-9492
e-mail: info@litsupport.com

1 defense finds, and can urge this Court and show this
2 Court would be materials that would be useful in
3 impeachment. That just simply can't be done in two
4 weeks. Certainly not by 26 sets of lawyers being
5 brought in here.

6 The idea that we would subpoena New Mexico
7 Department of Corrections for any number of these new
8 witnesses, and actually follow through with all those
9 subpoenas in two weeks, I don't think it can occur.

10 I know that on behalf of Mr. Garcia, I
11 would probably, in advance of that two weeks, draft
12 up the same set of subpoenas for every single inmate
13 witness that was disclosed two weeks prior and file
14 them on the day. And are we going to actually get
15 through them all in the two weeks? I just don't
16 think that's realistic. I understand there is
17 concern about security. There is understandable
18 concerns about safety. But there is nothing magical
19 about two weeks versus a month, versus two months.

20 And so, if I could urge the Court to think
21 a little bit differently about the Jencks material;
22 that by its nature it's actually Brady material. So
23 let's say it's an informant we'll call Informant A,
24 and they disclose his identity two weeks before
25 trial. His identity alone is Brady material, because

1 along with all these informants comes a criminal
2 history, comes a criminal background, in numerous
3 instances of dishonesty. So just their disclosure
4 alone encompasses Brady and Giglio material. So to
5 wait, really is -- causes the defense a disadvantage,
6 and without a real, an actual concomitant value in
7 protecting the witness.

8 For a lot of witnesses -- there is another
9 spreadsheet we have, which are people have been
10 already disclosed, their identity has been disclosed,
11 some of whom are in this courtroom today. And I
12 won't mention them by name, because I don't think
13 that's necessary for this argument. But for those
14 people, what's the reason at all behind delay? The
15 prosecution hasn't relied upon Jencks with regards to
16 those people. I don't know why. Because if they
17 haven't pled, they're just as much of a situation as
18 the people that are on this list. But they have
19 disclosed them. They've waived Jencks. And so what
20 is the reason for those individuals -- some of which
21 we mention in our motion, and I hope the Court
22 understands why I'm not trying to list them by name
23 here -- but for those individuals, what is the
24 purpose? What's the Government purpose in delaying
25 full disclosure of all materials concerning them that

1 could be considered required either under Rule 16 or
2 under the Due Process Clause? There just absolutely
3 isn't any justification, other than to gain a
4 litigation advantage.

5 So with respect to individuals that have
6 been disclosed, who have already -- or who already
7 pled, that it's public knowledge that they're going
8 to be cooperating, there doesn't seem to be any
9 reason to allow any delay in that regard.

10 With respect -- and I'm just going to try
11 to hit over some general areas that prior counsel had
12 already addressed. But the idea that the
13 investigating agencies here are not under the
14 umbrella of the prosecution, I think, is probably not
15 proper. I've read all through the Court's cases,
16 which that's what -- this Court has given us all
17 quite a big road map as to how the Court feels about
18 these issues. But one of the areas the Court hasn't,
19 well, really addressed is -- it's define the line
20 between what the Government has to produce from other
21 agencies. And that line is whether the governmental
22 agency is closely aligned with the prosecution.
23 Well, what does that mean? And I think it's actually
24 fact based. How much have they been working
25 together? Are they part of a joint task force? Are

1 they -- and they worked hand and glove together in
2 the development of the evidence, things of that
3 nature. And I think under any test, unless we're to
4 say the line stops at the end of the U.S. Attorney's
5 Office and the US Government, if there is a line,
6 it's somewhere past that, this closely aligned line;
7 then that line has been crossed here.

8 The Court has seen in the documents that
9 we've tendered to the Court as appendices to our
10 motions that there have been a series of
11 investigations run by the FBI and supervised by the
12 United States Attorney's Office, one after the other,
13 from the entire time period covered by the counts
14 within this indictment. And it actually precedes the
15 counts in the indictment two years prior to 2001.

16 There has been a joint task force, which is
17 one conducted by the Southern New Mexico Gang Task
18 Force, which is run by the Federal Bureau of
19 Investigation. It's one of the national task forces
20 for gangs that is located throughout the country.
21 They are the supervising entity that gathers this
22 information.

23 I don't know if the Court may or may not
24 have noted that Secretary Marcantel has been
25 presented at counsel table for the prosecution every

1 court date but today. At least -- I haven't been at
2 every court date, but other counsel has informed me
3 that he's been present at least many, many of the
4 occasions. I know that he was present at the arrest
5 of numerous defendants in this case, defendants that
6 were living in the community, he was present for --
7 along with FBI agents.

8 Numerous materials, going back to 2001 --
9 and I'm focused more on 2001, because my client's
10 counts relate to that -- but in 2001, there are
11 documents within the discovery that indicate that
12 witnesses were being interviewed by members of the
13 task force at the time of the murder.

14 And I would even indicate that, for
15 example, the most recent application for search
16 warrant that we saw, in 16-MR-628, it indicated -- in
17 its portion concerning the scope of the
18 investigation, it indicated in March 2015, the FBI,
19 in conjunction with the New Mexico Corrections
20 Department and the Bernalillo County Sheriff's Office
21 launched an investigation into the criminal
22 activities of the SNM criminal enterprise. These are
23 not separate entities that are working separate
24 investigations. They're working together.

25 Now, initially, perhaps on a prison murder,

1 it's taken initially by the New Mexico Corrections
2 Department, but then it goes to the FBI.

3 And the facts of Counts 1 and 2, which is
4 really what we're focusing on with this motion, what
5 happened in that case is New Mexico Corrections
6 Department investigated, and so did the State. They
7 turned it over to the state prosecutor, and the state
8 prosecutor said there was insufficient evidence to
9 prosecute any of the defendants that are charged in
10 this case. It was then reviewed -- but then that was
11 handed over to the federal government later on, and
12 it was revived in 2007; again, in 2013, I believe;
13 again in 2014, and eventually resulting in this case
14 number that arose in 2015.

15 If the Court were to review discovery,
16 which I don't think it wishes to, it would find that
17 the vast majority of the interviews of informants
18 were conducted through the cooperation of the
19 corrections department getting the inmates to the FBI
20 offices or to interview rooms to conduct interviews.
21 They're not separate entities for this purpose.

22 So I would suggest that if there is a case
23 where we look to see whether the New Mexico
24 Corrections Department or these local law enforcement
25 agencies are closely aligned with the prosecution,

1 this is the case. Now, we can do it the hard way by
2 doing subpoenas and -- you know, I'm not sure -- I've
3 reviewed the Court's Vigil case, and I'm not sure the
4 standards for obtaining materials from a subpoena are
5 going to be significantly different than what the
6 standards are that the Court's applying here today.
7 In fact, it might be more liberal for a defendant in
8 my review of the Court's decisions. But that's
9 probably not a good use of judicial resources. We're
10 going to have 26 or so lawyers doing subpoenas. And
11 the Court will be tied up in litigation for quite
12 some time on these matters.

13 Finally, on that area, I think that I would
14 note that one of the arguments against the US
15 Government reviewing the materials and turning them
16 over to the defense is that New Mexico Department of
17 Corrections wouldn't be in a position to object.
18 Obviously, they can be notified to object at any of
19 these proceedings, if it deals with materials that
20 they rely upon.

21 If I could have a moment, Your Honor?

22 THE COURT: Certainly.

23 MR. CASTLE: If I could show the Court an
24 exhibit on the Elmo. It's marked as Exhibit H, which
25 I think discussed the interrelationship of the

1 federal and state governments here, in regards to
2 these investigations. And what this is is a
3 publication put out by the FBI that addresses and
4 actually establishes gang task forces throughout the
5 country. And if we turn to page 2 of this document,
6 we'll see that the FBI established here in New Mexico
7 two task forces. One, the Albuquerque Safe Streets
8 Task Force, and the second one being the Southern New
9 Mexico Safe Street Violent Gang Task Force. These
10 are the task forces that -- I'm sorry, I should not
11 have changed the page. These are the task forces
12 which are involved in portions of the investigation
13 in this case.

14 So I think when the Court issues its order,
15 one of the first fault lines or areas that I think
16 the Court needs to address is whether, in fact, these
17 agencies are closely aligned with the United States
18 Government in this case.

19 The second issue is timing. And I know the
20 Court has spent a lot of time in previous rulings in
21 previous cases dealing with timing issues. And I
22 bring the Court's attention to its ruling in the
23 Padilla case in 2010, in which -- that the Court
24 wrote the following: "The Court believes that to
25 adequately investigate information which may be

1 valuable for impeachment purposes, the defendants'
2 attorneys and investigators should have sufficient
3 time to conduct an investigation, attempt to
4 interview the witnesses and request necessary
5 information which the United States may not have in
6 its possession from the proper sources."

7 Now, the problem here -- and I think I
8 alluded to it earlier -- but I'm somewhat unclear,
9 when the Court said, with regard to Jencks material,
10 you don't need to do it until two weeks, but with
11 regard to Giglio and Brady material, you have to do
12 it as soon as, you know, is reasonable under the
13 circumstances. And the problem with that is, let's
14 say there is an informant that's unidentified, and
15 Jencks would allow them not to identify them, but
16 would Brady and Giglio require the production of
17 their impeachment information, which is going to
18 disclose their identity anyway? So I'm unclear what
19 the Court meant by that. But if the Court really
20 meant with regards to Jencks witnesses that are going
21 to be disclosed late, that the Government doesn't
22 need to turn over Brady and Giglio concerning those
23 witnesses, that presents the problem of timing,
24 because of the follow-up investigation that we
25 need -- we all need to conduct.

1 Now, I don't know if the Court -- how the
2 Court wants to do this. We had specific requests
3 that we could go through.

4 THE COURT: Well, I was thinking -- until
5 Ms. Strickland wanted to go first, I was going to
6 allow you to make sort of an opening -- sort of
7 remarks, which I think you've now done. Maybe I
8 ought to allow the Government to make some opening
9 remarks response to yours, and then we take these one
10 at a time, these specific requests.

11 MR. CASTLE: In that regard then, Your
12 Honor, I'd like to finish then some opening remarks
13 with regards to this concept of the Sudikoff kind of
14 method of going about things, versus the other method
15 which this Court has adopted in the past. And I know
16 the last Court date the Court indicated that it
17 wouldn't prevent us from arguing or urging this Court
18 to consider using a different standard. And I'd like
19 that opportunity now.

20 THE COURT: Okay.

21 MR. CASTLE: I believe Co-Defendant Troup
22 filed a brief, which I believe addresses this in more
23 detail than we did. But the Brady materiality
24 standard is not useful in this context. In Kyles
25 versus Whitley, they talk about this concept that

1 there is cumulative Brady. So there are items that
2 you stack. I compare them to straws on the camel's
3 back, okay. And so, the idea of cumulative Brady is
4 when the straws get so weighty, that's when you've
5 reached Brady. The problem with that is the straws
6 that are on this camel's back aren't known yet by
7 Your Honor, and they're not known by the Government.
8 Because some of the straws that are on the back are
9 straws that -- pieces of evidence that we have
10 investigated and learned about, and we present during
11 a trial.

12 And so, when a court in an appellate
13 context looks at Brady, it's able to make a
14 materiality determination based upon all these pieces
15 of evidence, and look at the one that was missing, or
16 the five that were missing, and say, yes, you know, I
17 believe that that would have -- there is a reasonable
18 probability that that would have made a difference,
19 given the whole context of where we're going here.
20 But the prosecution can't even know that. They don't
21 even know what our defense is. Is our defense to
22 attack the credibility of a particular informant? Or
23 is it to embrace that informant's story?

24 For example, in Counts 1 and 2, there are
25 people that are in discovery that say somebody else

1 committed the murders, and ordered the murder, that
2 aren't my client and the defendants that are here.
3 That particular person might be embraced, versus
4 another one that might be contested.

5 And so we're encouraging the Court use a
6 different standard. And I believe the possible
7 exculpatory standard taken by Judge Pregerson -- I
8 think that's the proper pronounciation -- in the
9 Sudikoff case, works so that a prosecutor doesn't
10 have to guess what the effect of that piece of
11 evidence is going to be at a trial that hasn't
12 occurred in the context of a defense that they
13 haven't seen. It allows a prosecutor a much cleaner
14 line, which is to look at particular evidence and
15 say, is it possibly exculpatory? Is there a chance
16 that this is going to be something that would be of
17 value to the defense? Then you provide it.

18 Now, I'd encourage the Court to read -- it
19 could be accessed online -- I apologize, I didn't
20 provide it to the Court prior to today -- but there
21 was an oral argument between the United States
22 Supreme Court in the case of Smith vs. Cain that was
23 decided in 2012. And during that oral argument, it
24 was interesting because there was discussion about
25 whether New Orleans -- the New Orleans prosecutor had

1 an obligation to disclose material. And the argument
2 quickly devolved into an argument of, well, this
3 wouldn't have made a difference at trial using the
4 last prong of Brady, and the justices, almost every
5 one, including Justice Scalia, Justice Ginsburg,
6 numerous justices, all were saying to the prosecutor,
7 Well, even if you don't get to materiality, don't you
8 agree you had to disclose this? And the reason I
9 bring this up is because I believe the U.S. Supreme
10 Court understands that there is a difference between
11 what needs to be disclosed under the Due Process
12 Clause, and what will result in a reversal under the
13 Due Process Clause.

14 I know the Court has done -- in reading the
15 Hykes decision, the Court has reviewed a number of
16 criticisms of disclosure practices throughout the
17 United States. And I believe that we're seeing a
18 change in the analysis. And, frankly, in my reading
19 of this Court's decisions, Hykes seems to be a little
20 bit of a sea change in Your Honor's view of
21 materials. And I encourage the Court to go along
22 that direction. Because too much of the
23 jurisprudence in this country is about Brady
24 violations, too much of it.

25 And so here -- and maybe I'm wrong -- I

SANTA FE OFFICE
119 East Marcy, Suite 110
Santa Fe, NM 87501
(505) 989-4949
FAX (505) 820-6349



MAIN OFFICE
201 Third NW, Suite 1630
Albuquerque, NM 87102
(505) 843-9494
FAX (505) 843-9492
1-800-669-9492
e-mail: info@litsupport.com

1 heard that they have essentially an open file policy,
2 that anything they're getting from -- anything from
3 the State they're giving to us, whether it's from the
4 corrections department. If that's the case, then I
5 applaud that. I'm not sure that's actually accurate
6 from my review of discovery. In fact, I know that
7 portions of the discovery is blacked out. And
8 they've chosen not to give that portion. So to say,
9 yeah, we gave you a page, but we blacked out
10 information that we don't want you to have, I think
11 is the same as withholding information on certain
12 pages.

13 But I think that's where the Supreme Court
14 is going. And I believe it's a lot easier for a
15 trial court to -- and actually, the prosecutors -- to
16 manage their cases, if there is a bright line concept
17 that is easy to apply, rather than to sit there and
18 guess how this piece of evidence, in conjunction with
19 any other pieces of evidence that they're going to
20 withhold, might affect a case that they haven't
21 conducted.

22 I know that counsel for Mr. Troup actually
23 briefed this more than we did. And so I don't know
24 if the Court -- if they wish to add to my arguments,
25 but that we would encourage the Court to apply a

1 different standard.

2 THE COURT: All right. Let's do this:
3 We've been going for a while. Why don't we go ahead
4 and take our lunch break. I think some folks need to
5 use the restroom. So this will be our lunch break.
6 The marshals tell me it takes about an hour and a
7 half, so I guess we should shoot for being back
8 here -- when do you want everybody to be back,
9 everybody in? So 1:45 everybody needs to try to be
10 back here. That's probably ambitious, but let's give
11 it a shot.

12 And then, if other counsel want to be
13 involved in making an opening statement, then I'll
14 certainly let that the occur, and then I'll let the
15 United States make an opening statement.

16 All right. We'll be in recess till 1:45.

17 (The lunch recess was held.)

18 THE COURT: All right. Mr. Castle, did you
19 have anything else you wanted to say before --

20 MR. CASTLE: No, Your Honor, not as far as
21 a general statement.

22 THE COURT: All right. Did any of the
23 other defendants want to speak on this issue? Mr.
24 Burke? Ms. Harbour-Valdez? Anything you want to say
25 additionally on it? Mr. Burke?

1 MR. BURKE: Your Honor, I take it it would
2 be your preference that I address the motion
3 regarding Count 3, because it is similar, at this
4 time?

5 THE COURT: No, I just -- Mr. Castle had
6 mentioned your name as somebody who had written one
7 of the briefs, said it better. You might want to
8 comment. If you don't have anything to say, then
9 we'll --

10 MR. BURKE: I didn't say it better, Your
11 Honor. I want to address --

12 THE COURT: I wasn't making a ruling. I
13 was just pointing out what was said about you.

14 MR. BURKE: If it's all right with the
15 Court, I'll just wait to make my comments about the
16 follow-up motion on Count 3. Thank you, Your Honor.

17 THE COURT: All right. One thing I might
18 say in response to Mr. Castle's remarks, I'm not
19 sure -- you know, I'm going to take a relook at all
20 this -- but I'm not sure that Hykes -- I would
21 characterize myself -- and that's always a difficult
22 thing to do -- as really a sea change in the way I've
23 done things. I think Hykes is a little bit of a
24 reaction to Kozinski's opinion, or article. It's a
25 reaction to what Pregerson has done in the central

1 district. So I staked out my position. I think it
2 was probably good that it was done in another case,
3 without all the pressure of this. I guess, probably,
4 I'm not inclined to reconsider it. It seems to me
5 those guys have a particular view of Brady violations
6 that I don't quite share. And they're throwing out a
7 lot of law to get there, is sort of my thoughts on
8 that.

9 And so I'm going to take a fresh look at
10 it. You have my word on that. But that was some
11 work I did over the summer, so it's fairly fresh on
12 my mind. So I'm not likely to reconsider it.

13 But at the same time, I think what you see
14 is, in the other opinions, you know, I take a fairly
15 liberal view of Rule 16, take a fairly liberal view
16 of Brady, fairly liberal view of Jencks material,
17 both in my in camera reviews and working with the
18 U.S. Attorney's Office here. So if that's of
19 guidance to anybody, that's the way I see myself.
20 But, of course, everybody gets to have their own
21 opinion.

22 All right. Mr. Beck, are you going to make
23 sort of an opening statement before we jump into
24 these 17 categories?

25 MR. BECK: Sure, Your Honor.

1 Given the Court's recent comments, I think
2 we can short-circuit a lot of this, and get to the
3 heart of it.

4 I think there were some
5 mischaracterizations. A lot of that opening
6 statement was geared towards, I think, what was
7 classified as us saying that we're not working with
8 STIU, NMCD, or the FBI. And I think in our earlier
9 discussion, Judge, I told you that we are, and that
10 often when we call, they hand things over. I have
11 concern that sometimes this may not happen. But I
12 wanted to make clear for everyone that this is a
13 joint investigation. We're not contesting that at
14 all.

15 I think Mr. Castle was pointing the Court
16 to its decision in Hykes. I will refer the Court to
17 Footnote 12 at page 19 to 20. I think that's where
18 the Court talks about the United States' obligation,
19 at least as far as it sees it, in looking through
20 files. So it says, The Court consistently stated
21 that it cannot require the United States to get
22 documents from third parties or to seek documents
23 that refuse access to the United States. Here,
24 however, the United States has such access to -- in
25 that case the BCSO's personnel files -- even if the

1 BCSO still has custody or possession of them.

2 And in a string cite, Your Honor cites to
3 United States against Brooks, 966 F.2d Reporter,
4 which begins on page 1500, and the pincite is 1503,
5 from the D.C. Circuit in 1992. And Your Honor's
6 citation to that says, Stating that a prosecutor may
7 have a duty to search files maintained by other,
8 quote, "governmental agencies closely aligned with
9 the prosecution," unquote, when there is, quote,
10 "some reasonable prospects or notice of finding
11 exculpatory evidence," unquote. You went on to say,
12 "The Court wants to ensure that the United States is
13 the one determining that no Brady or Giglio material
14 exists, rather than the BCSO." And I think the
15 United States understood that when we were working
16 through this motion with counsel to try to see if we
17 could come to agreements on that. So I think that
18 was the first point. And I just want to make clear
19 that we are working with NMCD, the STIU, and the FBI
20 here.

21 Also, I think Mr. Castle said that
22 Mr. Marcantel had been at counsel table. And I have
23 not been here for every hearing. The ones that I
24 have been, he has not been here. But my co-counsel,
25 who have been here for every hearing, say that he has

1 never sat at counsel table, to the extent he ever has
2 been here.

3 I think the second point was the two-week
4 disclosure for Jencks materials. We have been
5 working to try to come together for a scheduling
6 order that would cover at least Brady and Jencks
7 materials. But that also has not come before the
8 Court and hasn't come through. So we have tried to
9 work on that.

10 The third point was just what the Court got
11 at. I think the Court's decision in Hykes -- and
12 this is probably where I'll end this opening
13 statement -- I think it does take somewhat of a
14 different view than the Court's decision in Padilla.
15 The Court's decision in Padilla just -- and I think
16 properly said that the Tenth Circuit has refused to
17 follow Sudikoff's mentality on Brady and Giglio.

18 In Hykes, I think the Court takes a little
19 bit more of a nuanced position, even if it's implied
20 and not explicitly stated, in requiring some sort of
21 factual demonstration that requested materials may
22 contain information that is properly discoverable
23 under Rule 16, or properly disclosed under Brady. So
24 I do think that the Court takes a more nuanced
25 approach than just saying, You can't have these.

1 Fairly so, I think the Court just, in the past in
2 that decision, required some sort of evidence. And
3 in that case, it was -- I understand it was a motion
4 to disclose Giglio material. And in that case, the
5 defendant came forth with known excessive force cases
6 that three BCSO officers, who were involved in arrest
7 of that defendant, had been in.

8 So I submit to the Court that I think it's
9 vastly different to come and ask for 600 STIU files
10 and everything in there, versus asking for three
11 personnel files and pointing to specific facts. And
12 I think the Court's decision in Padilla hits on that,
13 in that, you know, while that may be okay in civil
14 discovery, that's not how criminal discovery
15 operates, for very good reason, I think a lot of the
16 same reasons, STIU and New Mexico CD have been
17 pushing back. If we would request to try to track
18 down all of these files, they just don't have the
19 manpower.

20 Finally, I think the size of this
21 prosecution was a little bit overemphasized, and has
22 been throughout. We understand from the Deputy Chief
23 of the Department of Justice Organized Crime and Gang
24 Unit, they're the ones who see every count that we
25 indict, see every count that is indicted with RICO

1 cases across the country, and they've informed us
2 that 20 to 30 defendant prosecutions across the
3 country are nothing abnormal. They are sort of the
4 norm for these types of cases. There is nothing
5 specific here. And they've said that currently there
6 are cases with over 100 defendants being prosecuted
7 across the nation. So this is not as complicated of
8 a case as some defendants may assert that it is.

9 THE COURT: Don't press that last point too
10 strongly. The Tenth Circuit has given me an extra
11 law clerk, and I don't want them to take him away.

12 MR. BECK: I saw that, Your Honor. Well,
13 we're always happy to have the help.

14 THE COURT: All right. Thank you, Mr.
15 Beck.

16 Mr. Castle, if you have anything else you
17 want to say in response to Mr. Beck, you're welcome
18 to do so. But otherwise, let's start taking up the
19 disputes that remain. I know y'all settled a lot of
20 them in the briefing, and may have gotten some
21 progress this morning.

22 MR. CASTLE: Yes, Your Honor. I'll just --
23 before going to the specifics, I would just note that
24 it's not the number of defendants, it's the number of
25 years and number of events. We're talking about

1 allegations going back to the mid 1980s.

2 And perhaps -- I know the Court had
3 indicated in Hykes that often a colloquy with the
4 prosecution might be of assistance in ferreting out
5 some information. And perhaps, if the Court is going
6 to engage in that, one of the questions is: Are we
7 going to be putting -- are they going to be putting
8 on evidence that goes back to the mid '80s and the
9 mid '90s, or are we going to only be focusing on
10 counts -- the evidence concerning the counts?
11 Because I think that would vitiate against some of
12 our arguments.

13 Judge, our first specific request is
14 actually in the body of the motion for specific
15 discovery. It's not one of the numbered ones, and I
16 apologize that I didn't set it out as a numbered one.
17 But in our status report, we discuss it, and that is
18 in regards to --

19 THE COURT: When you're referring to the
20 status report, what are you talking about?

21 MR. CASTLE: I'm talking about Document No.
22 708. It's titled, "Status report regarding motion
23 for specific discovery."

24 THE COURT: I didn't read it. I thought of
25 it as sort of a reply or something. But I see what

1 you're titling it.

2 MR. CASTLE: The first request we had made
3 in our original motion was for a prior interview of
4 Mr. Lujan. And to give the Court some background:
5 Our review of the discovery, at least with respect to
6 Mr. Garcia is that Mr. Lujan is essentially the only
7 witness to date that's been identified that indicates
8 our client is responsible for the murders in Count 1
9 and Count 2. And so in their disclosures, they did
10 provide to us interviews that were done with Mr.
11 Lujan. The earliest one being August 8, 2007. In
12 that interview, at the beginning of the interview,
13 the investigator indicates that he'd had a prior
14 interview with Mr. Lujan, and references the prior
15 interview.

16 And so it's our position that, you know, if
17 Mr. Lujan's name had been not disclosed and they were
18 relying upon Jencks, they might have an argument.
19 But they have released that. And they released his
20 other statements. And so, obviously, the most -- the
21 earliest statement in time, if any of them have a
22 liability, that might have the most reliability. And
23 so it's necessary to review that for the purposes of
24 investigating and preparing for the case. So it's
25 discoverable under Rule 16. If it's inconsistent

1 with any of his later statements, obviously, then it
2 would be Brady. But I don't believe the Government
3 has addressed this issue in its response, probably
4 because we had put it in the body of our motion and
5 not as a numerated request. But it's our position
6 it's required to be produced.

7 THE COURT: All right. Mr. Beck?

8 MR. BECK: Your Honor, we've produced a
9 number of statements. I don't know --

10 THE COURT: What's the date of the one that
11 you do have?

12 MR. CASTLE: August 8, 2007, is the
13 earliest in time. We have others.

14 THE COURT: It refers to an earlier one?

15 MR. CASTLE: Right.

16 MR. BECK: Yeah, I understand that. I read
17 that this morning when I read this status notice. As
18 I said, we produced a number of statements. I don't
19 know whether that one has been produced. I assume
20 that it hasn't. We will certainly go back and look
21 for that.

22 THE COURT: And you'll produce it if you
23 find it?

24 MR. BECK: I will say that I think there
25 are some statements that have been released that

1 defendants -- counsel have been sensitive about, that
2 perhaps they would not rather have had them released.
3 So I think that, if we release it, if we have it and
4 can find it, but I would just caution that there may
5 be objections from other people to releasing the
6 statement. But I'm sure we will go back and look for
7 it.

8 THE COURT: And you'll produce it if you
9 find it.

10 MR. BECK: Yes, we'll produce it.

11 THE COURT: All right.

12 MR. CASTLE: Your Honor, that's
13 satisfactory. I would only ask for a due date,
14 because in their response they filed in July --

15 THE COURT: Can we use a 14 day for
16 anything I order produced, Mr. Beck?

17 MR. BECK: Your Honor, that sounds fair. I
18 would just caution that, as I discussed with
19 Mr. Castle this morning, the DNA evidence that
20 they've looked for, that DNA material, is with the
21 State, and it may take them longer to get it to us.
22 We've already requested that information; it just
23 hasn't been given to us. So we will do our best
24 efforts to do that. But I think 14 days --

25 THE COURT: Does that time frame sound

1 good, Mr. Castle?

2 MR. CASTLE: Yes, Your Honor. And does the
3 Court want me to address the DNA now, or --

4 THE COURT: Go ahead, since it's been
5 raised.

6 MR. CASTLE: Fourteen days for anything
7 else the Court orders is fine with us.

8 With regard to the DNA, I believe the
9 argument that has been made is that the only thing
10 they need to produce is -- or at least prior to
11 today -- was the only thing they needed to produce
12 was the final report.

13 THE COURT: Yeah, I'm inclined to include
14 the underlying data. So if there is underlying data,
15 I think it needs to come up with the report; that we
16 don't need to just cut it off with the actual final
17 report, but whatever hard data results or things like
18 that, I think ought to come up, too.

19 Do you want to respond on that? Can you
20 live with that, Mr. Beck?

21 MR. BECK: Yes, Your Honor. I'd point
22 Mr. Castle to paragraph 14 on page 16, where I said,
23 "In the interests of" -- or where the United States
24 said, "In the interest of compromise, and in light of
25 Court's decisions in Hykes and Rodella, the United

1 States agrees to produce the requested information,
2 to the extent that it exists, and is in the United
3 States' possession, custody, or control." So we did
4 agree to pass that on. And as I said, we've asked
5 the State for it, so we are getting it. So we did
6 already agree to produce that.

7 MR. CASTLE: I understand. But when you
8 couch it with "to the extent it's in our possession
9 and control," you're not --

10 THE COURT: Well, let's do this: If you
11 can't get the State to turn it over, then advise
12 Mr. Castle. And if it exists, get as much
13 information as you can to Mr. Castle. If they say it
14 doesn't exist, then relay that information to him.
15 And obviously, if they're willing to produce it to
16 you, then it needs to be produced.

17 And I'm going to relook at this issue as to
18 what I'm going to do with the State Police. But
19 right at the moment, I'm going to assume for today
20 that I'm going to leave them as not under the
21 possession, custody, and control of the U.S.

22 Attorney's Office, and so they'll have to be treated
23 as a third party. But I'll take a hard look at that.

24 Anything else on the DNA, then, Mr. Castle?

25 MR. CASTLE: No, Your Honor.

1 THE COURT: All right. Next issue?

2 MR. CASTLE: It is the other case files.

3 We gave the Court a number of case files that had
4 certain numerical designations, which are for my
5 understanding FBI file numbers of investigations.
6 And we identified three in our original motion. And
7 from what we can tell, the Government did search
8 using defendant name search methods for at least two
9 of the three files. The third one, they may very
10 well have done that and nothing was produced. But I
11 don't think that satisfies their obligation. Those
12 three files, and then the two that we identified most
13 recently in our status report, were all
14 investigations of the SNM for various acts that are
15 charged in this indictment. And so they need to --
16 because they are the federal government's files, they
17 need to review them for Rule 16 and Brady-Giglio
18 materials and produce them. I think this would be an
19 opportune moment to ask if that's the case, if the
20 Court wanted to engage in that colloquy, because if
21 they said they have done that, then I think the law
22 says we have to essentially accept that.

23 THE COURT: All right. What is the status
24 of the review of these three files, Mr. Beck?

25 MR. BECK: We've reviewed these three files

SANTA FE OFFICE
119 East Marcy, Suite 110
Santa Fe, NM 87501
(505) 989-4949
FAX (505) 820-6349



MAIN OFFICE
201 Third NW, Suite 1630
Albuquerque, NM 87102
(505) 843-9494
FAX (505) 843-9492
1-800-669-9492
e-mail: info@litsupport.com

1 and produced information from them, Your Honor. With
2 regard to the other files that counsel has just
3 brought to our attention, those are significantly
4 older. We're not sure that any of those
5 investigations touched on the overt acts in this
6 VICAR. But we will go back and look for them and
7 disclose the material that Rule 16 requires us to
8 disclose.

9 THE COURT: And you'll use my sort of
10 liberal Rule 16 and Brady eyes to do that review?

11 MR. BECK: Yes, Your Honor.

12 THE COURT: All right. Anything else on
13 that, Mr. Castle?

14 MR. CASTLE: No, Your Honor.

15 The next is what have been called the STIU
16 files. And right off the bat, I would tell the Court
17 that I would agree that our request is overbroad.

18 But I would indicate in this case, as far
19 as Count 1 and Count 2, they are murders that
20 occurred on the same date that occurred in two
21 different cell blocks. And for those cell blocks
22 there were a limited number of inmates that were in
23 those cell blocks, who all had the opportunity to
24 have committed the murder.

25 THE COURT: What would you say -- what

1 would be the estimate of people that you think would
2 be reasonable suspects in the cell block?

3 MR. CASTLE: I can show the Court, using
4 the Elmo. The Government had done two PowerPoints
5 for each murder. And in the PowerPoints they set
6 forth the evidence collected in the case. And for
7 each of those two homicides, they listed all of the
8 people in the cell block as suspects.

9 So what I'm showing the Court right now is
10 what's been marked as Exhibit A, which is for the --

11 THE COURT: Are your monitors working here?

12 MS. STILLINGER: This one does not.

13 THE COURT: But yours at the back is
14 working?

15 MR. BENJAMIN: No, Your Honor. I've seen
16 the PowerPoint.

17 THE COURT: Not at the table, they aren't
18 working.

19 MR. CASTLE: It's all in discovery, Your
20 Honor, if anybody wants to see it.

21 And there is a similar PowerPoint that
22 lists the suspects and the people that were in the
23 cell block at the time of Count 2 murders. So I can
24 show the Court the second one, but I think this is
25 demonstrative.

1 THE COURT: So this is for one of the
2 murders?

3 MR. CASTLE: Yes, it's one of the murders.
4 So they've listed the suspects for us. So I think
5 they're relatively identifiable to the prosecution.
6 For those individuals, obviously, these STIU files
7 are going to produce material that's -- that can
8 assist in the defense. What those files contain
9 normally -- and I haven't seen one here in this
10 case -- is historical records of gang involvement by
11 individual. It will show whether they are a risk to
12 other individuals in the prison. They would show,
13 for example, whether any of these individuals had
14 problems with the victims in this case, or had a
15 motive in the case.

16 And so we would ask that those specific
17 STIU files for the suspects that are identified in
18 both Exhibit A and that portion of Exhibit B, which
19 deals with the suspects -- and I think that the
20 prosecution knows the list -- that those be reviewed
21 also for Rule 16 and Brady materials.

22 And here is the second list, which is a
23 selected page of Exhibit B.

24 THE COURT: All right. Mr. Beck?

25 MR. BECK: Well, I think Your Honor has

1 given pretty clear guidance where you intend to go
2 with that request. And the United States isn't
3 opposed to reviewing these suspects' STIU files. And
4 to the extent that there is material -- again, I
5 can't say that STIU would wholesale hand them over.
6 I think they've been receptive so far. We would
7 obviously alert the Court if we have trouble. But I
8 can tell you that, given this much more limited
9 request here today, we're happy to review these with
10 Your Honor's liberal standard in mind and produce
11 Rule 16 materials.

12 THE COURT: All right. Thank you, Mr.
13 Beck.

14 Anything else on that issue, Mr. Castle?

15 MR. CASTLE: No, Your Honor.

16 The third request is the STIU files and
17 Giglio material concerned Mr. Lujan. Once again,
18 they've already disclosed his identity, all but one
19 of his statements so far. So there doesn't seem to
20 be any reason to resist turning over materials that
21 they possess or can get easy access to with regards
22 to Mr. Lujan.

23 THE COURT: Mr. Beck?

24 MR. BECK: I think there seems to be some
25 confusion here, Your Honor. Mr. Lujan is not a

1 Government witness. He's not a Government
2 cooperator. His statements are not Jencks. That's
3 why the United States said, We'll turn them over. So
4 to the extent that they're asking for more, I think
5 that that's inappropriate. That's based on some
6 misunderstanding. To the extent they're asking us to
7 review the STIU files for Rule 16 materials, just
8 like we're going to do with those other suspects, I
9 think that's appropriate, and we'll do that.

10 THE COURT: Mr. Castle?

11 MR. CASTLE: Well, then I don't know how
12 they're going to prove their case. Because their
13 PowerPoints say that their evidence comes from Mr.
14 Lujan against my client; that he had a conversation,
15 a one-on-one conversation between the two of them,
16 and that my client allegedly told Mr. Lujan to
17 orchestrate these two murders.

18 So I understand they may not have to
19 designate their actual witnesses until two weeks
20 prior to trial. But if they don't designate Mr.
21 Lujan by then, then we probably are going to be
22 dismissed out of the case. But I want to prepare in
23 advance of that.

24 So I think it's logical -- and my guess is,
25 if we were to look at the Grand Jury transcripts in

1 this case, my guess is the indictment was obtained
2 based upon Mr. Lujan's statements. I'd be shocked if
3 it wasn't.

4 So I think in some respects the Court has
5 to order discovery based upon likelihoods. And
6 what's the worst that happens if we get this material
7 and Mr. Lujan doesn't become a witness, and we're
8 prepared for something that we don't have to defend
9 against? I don't see that to be a legitimate
10 Government interest in holding this evidence at this
11 time.

12 THE COURT: Any response on that, Mr. Beck?

13 MR. BECK: Your Honor, I mean, I think the
14 rules of discovery, Rule 16, Brady, Giglio, Jencks
15 are clear. As I said, Mr. Lujan is not a cooperating
16 defendant. He's not a testifying witness in this
17 case. So --

18 THE COURT: You're going to prove your case
19 without him?

20 MR. BECK: We're in that position now,
21 so --

22 THE COURT: But you're going to review his
23 file, if you have not already done so, for Brady and
24 Rule 16 material?

25 MR. BECK: Yes, Your Honor. I said we'd do

1 the same thing we were going to do with those other
2 suspects.

3 THE COURT: Well, I think that's all I can
4 do, Mr. Castle.

5 MR. CASTLE: I understand.

6 If the Court will give me a second. I took
7 the wrong set of glasses out of my house, and I'm
8 going to be functioning with my wife's glasses who
9 has better eyesight than I do.

10 THE COURT: I've got some drug store
11 cheaters if you need them.

12 MR. CASTLE: The next question is in
13 regards to what's called separatee status. And what
14 those are is, normally, in the Department of
15 Corrections files, they will indicate who creates a
16 risk to an individual. That's so that they can make
17 sure that they're not housed together, take
18 precautions, so Corrections can do what they can to
19 protect people.

20 For the two victims in this case,
21 obviously, their separatee listings is literally a
22 list of alternate suspects, who could have either
23 participated or ordered their deaths.

24 So I think the Government is in agreement
25 on producing that within the two-week period.

1 THE COURT: Is that correct, Mr. Beck?

2 MR. BECK: That's right, Your Honor. We
3 discussed that beforehand. That's the separatee
4 listings, Number 8; correct?

5 MR. CASTLE: Yes.

6 THE COURT: All right. Anything else on
7 that, Mr. Castle?

8 MR. CASTLE: No, Your Honor. The only
9 thing I would note is, these motions were filed in
10 June. And I think that this is a concern that we
11 have that the Government recognizes that this
12 material should be reviewed and turned over, and yet,
13 we're here in October without these materials. And
14 that's one of the driving forces behind the motion to
15 continue the trial. So I know the Court's doing what
16 it can by giving a two-week deadline. But I would
17 just make that note.

18 The next request concerns segregation
19 waivers signed by two victims in Count 1 and Count 2.
20 And I believe the Government is willing to provide
21 that within the two-week period.

22 MR. BECK: That's right, Your Honor.

23 THE COURT: All right.

24 MR. CASTLE: The next one is a request for
25 the Wanted for Escape Master Record Entry. And when

1 we discussed things this morning, the Government
2 didn't realize, but it had turned that over, so we
3 already have it, and we withdraw our request.

4 The next one is the logbooks. I know the
5 Court addressed this with prior counsel. And we had
6 asked for a three-month period before and after. And
7 I know the Court had said three weeks before, and I
8 think three days after. Let me explain at least why
9 the after ones are relevant. After a homicide
10 happens at Corrections, they -- the investigators
11 within the Department of Corrections immediately try
12 to gather intelligence information to try to
13 determine, not just who committed the crime for the
14 purposes of prosecution, but they're also trying to
15 figure out security issues. So what happens in the
16 weeks afterwards is that inmates are moved, and
17 they're relocated because they're possibly suspects
18 or possibly witnesses or possibly at risk. So those
19 logbooks will give us a history of who the witnesses
20 are that we really actually need to talk about.

21 Now, we're trying to investigate and defend
22 a case on allegations that happened 15 years ago. So
23 these logbooks are almost like an historical record,
24 the best historical record that we can get our hands
25 on, as to who are the people that we need to go

1 interview and why. And they'll also contain
2 information, such as, An informant told me John Doe
3 had killed this person, and so we're moving them out
4 of this unit. It contains all kinds of information.

5 I know the Court had given discovery of the
6 regulations that occur that are supposed to deal with
7 what they're supposed to put in there. But I can
8 tell the Court, even though those regulations
9 undoubtedly exist, those logbooks will often contain
10 information that's not pursuant to the regulations,
11 just because of the nature of what people write down
12 for notes. And so we're asking the Court to expand
13 that -- I could probably live with less than three
14 months on the front end, if we could get more on the
15 back end. Now, I'm not trying to horse trade --
16 well, I am trying to horse trade with the Court. But
17 I think perhaps two and two would be a better search
18 area for us.

19 THE COURT: Mr. Beck?

20 MR. BECK: Your Honor, I'll refer the Court
21 and counsel to page 16, paragraph 13 of our response
22 brief to this motion. And it's substantially the
23 same in the response to the other motion. We
24 inquired of New Mexico Corrections Department, if
25 they have these files. Pursuant to their records

1 retention policy NMAC 1.1A.770.75, they only retain
2 documents for five years after they're created. So
3 these have been destroyed pursuant to that policy.
4 They were destroyed, presumably, sometime in 2006.

5 So the New Mexico Corrections Department
6 preserved logbooks from the days of these murders,
7 and those have been disclosed in discovery. But the
8 other files have been destroyed.

9 MR. CASTLE: Except, Your Honor, can the
10 Government disclose the exact date that they were
11 destroyed? The reason that is is because, in 2007,
12 at least at the earliest, the federal government
13 started investigating these cases. And obviously,
14 that would be relevant to possible arguments under a
15 Trombetta destruction issue. So we would ask for a
16 destruction date.

17 THE COURT: Can you provide that
18 information, Mr. Beck?

19 MR. BECK: I can certainly ask the New
20 Mexico Corrections Department to provide that
21 information. And I'll respond to opposing counsel
22 what that answer is.

23 THE COURT: All right. Anything else on
24 that issue, Mr. Castle?

25 MR. CASTLE: No, Your Honor.

1 The next area is with regard to pen packs.
2 And I think there are a couple different requests for
3 pen packs for different individuals. And I believe
4 the Government's response was, Well, you can go
5 through IPRA, the state FOIA process, to obtain these
6 materials. And our argument is that they have easy
7 access. And it doesn't really assist -- it's not
8 efficient if all 26 remaining defendants have to file
9 separate IPRA requests to get the same exact
10 material. It sounds like it's readily available to
11 the Government.

12 And I think, kind of an associated issue
13 with this is, under Rule 16, the prosecution is
14 required to give the defendants their own criminal
15 record, which they have not done to date. And so,
16 when they're over there, if the Court orders it,
17 obtaining the pen packs for the individuals we've
18 identified --

19 THE COURT: What's the list that you're
20 working from on the pen packs?

21 MR. CASTLE: It's an individual by the name
22 of Frederico Munoz, Mr. Lujan, the two named victims
23 are the ones that we listed.

24 THE COURT: So you've got four pen packs?

25 MR. CASTLE: Four pen packs.

1 THE COURT: Mr. Beck, your thoughts?

2 MR. BECK: I'm trying to come back from
3 that. So I think we're conflating two sort of
4 requests here. Specific request Number 12 is the pen
5 pack for Frederico Munoz; specific request Number 4
6 are the pen packs for RG, FC, and all inmates housed
7 in P1 green pod and O1 yellow pod.

8 THE COURT: It sounds like Mr. Castle is
9 just reducing it to four: Two victims, Lujan,
10 Frederico.

11 MR. BECK: I think we've conceded that we
12 will provide the victims' pen packs. We'll also
13 provide all of the defendants' pen packs.

14 But I should clarify for the Court, I think
15 Mr. Castle was saying we have easy access, and we're
16 requiring them to go through IPRA. It's not quite
17 that easy. The way I've been informed these pen
18 packs exist is that someone in the corrections
19 department, when they are asked by a DA, or something
20 to that effect, will go out to these publicly
21 available resources and compile the pen pack at that
22 point. So it takes man-hours. And then they print
23 them off. So it's not like these things just come
24 about when a defendant is housed in a facility.

25 So we have requested, and we have pen packs

1 for all of the defendants. But outside of that, it
2 takes a lot of work from the corrections department
3 to get those, which is why I think at one point we
4 had offered, if they would identify specific suspects
5 or other inmates that they wanted, we would make that
6 request to NMCD. And they agreed to do so for their
7 IPRA fee of 25 cents per page to do that. I don't
8 think that still exists, because those discussions
9 didn't come to fruition. But I just want to clarify
10 for the Court that the pen packs, they're not just
11 automatically generated when there is an inmate.

12 THE COURT: But you're willing to produce
13 the pen packs for all the defendants?

14 MR. BECK: That's right, Your Honor.

15 THE COURT: And the two victims?

16 MR. BECK: That's right, Your Honor.

17 THE COURT: And Lujan and Frederico?

18 MR. BECK: They are defendants, Your Honor,
19 so yes.

20 MR. CASTLE: That's satisfactory. The only
21 thing I would note is, you know, I've heard time and
22 again that there is difficulty in getting some
23 materials from the corrections department, and
24 sometimes not. They didn't have any difficulty ever
25 getting materials from our clients' STIU files or

1 anything bad about our clients. So they have the
2 ability to do it. I'm not talking necessarily about
3 the US Government. I'm talking about Corrections.
4 They have the ability to gather this material when
5 they're trying to prosecute someone. It seems like
6 any arguments that they don't have that ability, or
7 it takes too much man-hours, probably should fall on
8 deaf ears, because they do it when they want to.

9 THE COURT: It sounds like you're getting
10 what you want.

11 MR. CASTLE: Yes, I am.

12 MR. BECK: And I'll respond to that, Your
13 Honor. I think I touched on this this morning in
14 relation to the first motion, in that there is a
15 difference, from our standpoint -- which we submit
16 should be a difference from the Court's standpoint --
17 between documents involved in this investigation and
18 STIU files outside of this investigation. I don't
19 think the United States has represented that it's
20 difficult to get the STIU files that were involved in
21 this investigation, and that would be the defendants'
22 STIU files.

23 THE COURT: All right. Anything else on
24 that issue, Mr. Castle?

25 MR. CASTLE: No, Your Honor.

1 THE COURT: All right.

2 MR. CASTLE: The next is a fairly broad
3 request. And that was Number 5, which was any and
4 all files, including intelligence materials
5 concerning the SNM, and then it goes on. And the
6 thrust of this argument, which I put in the motion
7 and the reply, is they've indicted this large time
8 period in there, from what we can tell, tell the jury
9 of all these horrific acts that the SNM has done over
10 the last 25 years. And I would ask that the Court
11 perhaps engage in that colloquy with the Government
12 as to whether they're really going to be putting on
13 that evidence. Because if they are, various
14 defendants are going to need to attack that evidence.
15 For example, that their client wasn't even in prison,
16 perhaps, during that time period, and therefore, it's
17 not relevant as to their client. Things of that
18 nature. We're going to have to look into what their
19 evidence is.

20 Now, kind of -- in addition to that is this
21 concept that the SNM is some singular organization
22 that is responsible for all these murders, and things
23 of that nature. What the documents we've received to
24 date show is that this umbrella concept of the SNM is
25 actually an umbrella that includes a number of

1 different groups.

2 For lack of a better -- I would give an
3 analogy to like the CRIPS gang. The CRIPS people
4 wear the CRIPS colors, and call themselves CRIPS in
5 every major city in the country. But they're not all
6 working together. There is a name, and then they
7 call themselves that, but they may not be part of the
8 actions in New York City by the CRIPS, if they're
9 here in Albuquerque. And so the materials we've
10 received indicates that the SNM has actually
11 splintered over many years and formed different
12 groups. Some called the All Stars, for example, or
13 the Old Timers, or different groups within this
14 umbrella concept.

15 I understand the Government wants to keep
16 them all tightly knit and all one organization. But
17 we need this information, frankly, on behalf of my
18 client, who was out of custody, living on the streets
19 with his family, is a grandfather, at the time that
20 the vast majority of the crimes alleged in the
21 indictment happened.

22 So we need to be able to review the SNM
23 records generally, because it will create defenses
24 along the lines of whether this is a criminal
25 enterprise, whether the defendant is part of that

1 criminal enterprise, the scope of that criminal
2 enterprise, and things of that nature. But I think
3 it can be constricted, if, in fact, we hear from the
4 Government they're not going to be putting on
5 evidence from the mid '80s and the mid '90s; they're
6 going to start with the date of the offenses and move
7 forward.

8 And I understand there might be some slight
9 historical evidence just to indicate what the SNM
10 might be. But their indictment alleges this. And
11 we're asking for discovery that's relevant to the
12 time period in their indictment.

13 THE COURT: All right. Thank you, Mr.
14 Castle.

15 Mr. Beck, is there anything you can share,
16 are willing to share that might help cut down the
17 scope of the request that the defendants are making?

18 MR. BECK: Not right now. But I'll give
19 the Court some thoughts. At page 5 of the Court's
20 opinion in Hykes, the Court is discussing the law
21 regarding Rule 16(a)(1)(E)(i), and says that an item
22 is material to the defense's preparation, quote, "if
23 there is a strong indication that it will play an
24 important role in uncovering admissible evidence
25 aiding witness preparation or assisting impeachment

1 or rebuttal."

2 So when we're talking about request Number
3 5 here, which is "Any and all files, including
4 intelligence materials concerning the SNM listing
5 suspected and confirmed members, and their activities
6 from the time period that the SNM was formed to the
7 last date alleged in the indictment, February 27,
8 2016," that is -- I mean, I would put that on a
9 bumper sticker for the quintessential fishing
10 expedition.

11 THE COURT: Well, I understand the
12 argument. But what do you do, though, if you're in
13 the defendants' position facing the scope of this
14 indictment?

15 MR. BECK: Well, I disagree that the scope
16 of the indictment is that large. I mean, he said, if
17 it's just some background information, then we don't
18 need to get into that. And that's what's in the
19 indictment. It says that the gang was formed in
20 1980, with the PNM riot, and has existed since then.
21 And it lists some historical background to the gang.

22 What the United States has to prove is that
23 the organization engaged in racketeering. And if
24 there are overt acts, we have to prove those overt
25 acts; we have to meet our burden of proof. And I

1 think the Court should look to its discovery and say
2 that, if they come forward with specific allegations
3 in the complaint, or specific facts that a suspected
4 gang member, suspected SNM file from 1981 -- well, go
5 back -- the STIU, STG began to exist in 1999, so they
6 wouldn't go back that far. They would exist in 1999.
7 But if they could come forth and email -- it doesn't
8 have to be in a motion -- and say: Here is the fact;
9 here is the allegation; this is why we need this
10 group of files; this is why we need you to look at
11 this person's file, the United States has been open
12 to doing that.

13 And I think that, while the criminal rules
14 may not require the United States to do that, it's
15 been willing to do that, with the Court's guidance
16 and its decisions.

17 And so I don't think that this request has
18 to -- necessitates the Court getting into what we're
19 going to prove at trial. If there are requests for
20 specific information, I think we can get to that.
21 But I would submit to the Court that Rule 16, the Due
22 Process Clause, and the Court's own, as you said,
23 liberal discovery view, do not merit that we have to
24 look through these -- what I have been told is over
25 600 files, most of which are in archives, anywhere

1 from, at a minimum 30 to 40 pages, to a maximum
2 hundreds of pages in each one of these files.

3 THE COURT: All right. Thank you, Mr.
4 Beck.

5 MR. CASTLE: Yes. Initially, I keep
6 hearing this concept of fishing expedition. Well,
7 the fishing expedition that has originated is this
8 indictment. In the terms, I think, of the last
9 search warrant that was issued, it was -- it's a
10 statement that's being made to the SNM. And they
11 cast their net wide and deep, and they tried to
12 capture everybody that they thought was an SNM member
13 or a big SNM member for the last 15 years. And so
14 they're the ones that cast the wide net. And so
15 within that net is information. Now, the Government
16 tells us -- what they're stating here is there may be
17 files -- there are files -- I think 600 files -- that
18 contain information about the SNM, but we're not
19 going to review them, unless you specifically point
20 them out.

21 And I want to show the Court what happens
22 when that occurs.

23 THE COURT: When we talk about the 600
24 files, what are we talking about? What are these
25 files?

1 MR. CASTLE: Well, I don't know. What the
2 Government --

3 THE COURT: What do you think they are?

4 MR. CASTLE: I think some of them are
5 federal investigations. And that's what I wanted to
6 show the Court.

7 THE COURT: So you think that there are 600
8 separate state corrections department investigations
9 of the SNM Gang in the prison system?

10 MR. CASTLE: I have no idea how many there
11 are.

12 THE COURT: Is that what your thinking is
13 we're talking about?

14 MR. CASTLE: I think -- my guess is -- and
15 I guess the best person to ask is the Government --
16 but I think the 600 include probably state-run
17 investigations and Corrections-run investigation.
18 But certainly, some of them include federal
19 investigations.

20 And what I wanted to show the Court is what
21 happens. This is a document that we received in
22 July, because we identified one of those case
23 numbers, a prior investigation that was listed as an
24 investigation into this -- these murders -- they had
25 not reviewed. And what it shows -- and I'm going to

1 show it to the Court -- on page 2; it's Exhibit D at
2 page 2. This particular document, it talks about the
3 splintering of the SNM in the year -- well, it
4 doesn't really say, but it appears to be in the early
5 2000s -- and that the SNM split. And that, as a
6 result of it, one group of the SNM, who are indicted
7 here today, sought to put a green light, or a hit,
8 whatever you want to call it, on my client. Now, my
9 guess is my client wasn't part of that conspiracy.

10 So the problem is, if the Government is not
11 looking into all their files that they've
12 investigated the SNM, they're not going to find
13 exculpatory information, such as I am demonstrating
14 to the Court here. Now, some of them might be
15 inculpatory also. But it talks about the splintering
16 of the SNM into different groups. And I'm telling
17 the Court right now that this is a preview of a
18 motion to sever the Court is probably going to hear
19 from the Count 1 and 2 defendants.

20 But in their own documents, which we would
21 never have gotten, because they weren't going to
22 conduct their own Brady and Giglio analysis, or Rule
23 16 analysis, of the files that were investigated by
24 the FBI and the U.S. Attorney's Office here, is
25 exculpatory information.

1 I know the Court is still looking at it, so
2 I'll wait until the Court is done.

3 THE COURT: Go ahead.

4 MR. CHAMBERS: Excuse me, Your Honor.
5 Would Mr. Castle identify that document by Bates
6 number, please?

7 MR. CASTLE: It is Bates No. 2647 in the
8 DeLeon case.

9 MR. CHAMBERS: Thank you.

10 MR. CASTLE: There are numerous documents
11 like this that I can show the Court, and I've marked,
12 but --

13 THE COURT: Well, let me ask this: If I
14 understand what you're saying is you identified a
15 file, told them to go look at it; they did, and they
16 found that, and they gave it to you.

17 MR. CASTLE: Yes.

18 THE COURT: I guess I'm wondering why this
19 process -- some version of what Mr. Beck is
20 suggesting, won't work. Rather than just a wholesale
21 investigation of the 600 files, instead they're
22 receptive to looking at the ones that you point out
23 may have something that's useful to you.

24 MR. CASTLE: Well, because we're not being
25 given information about all of the files that are at

1 least part of the federal investigation.

2 THE COURT: How did you get information on
3 this file?

4 MR. CASTLE: Only because we identified the
5 case number, and asked them to go look at it.

6 THE COURT: How did you do that? How did
7 you know that existed?

8 MR. CASTLE: One of the documents in a
9 previous disclosure under this case number also
10 referenced, and said "prior file," and it referenced
11 that number. And I think that those references were
12 attached to our original motion. So we kind of found
13 it. It was like finding a needle in a haystack.

14 I know the Court has kind of drawn a line
15 between materials from the State, that the Government
16 may not need to go review. But these are -- the
17 materials that are done by federal investigation,
18 there can be no doubt that under Kyles they have a
19 duty to review all the files of the SNM -- not all
20 criminal files, but of the SNM -- that -- and look
21 for exculpatory material and Rule 16 type material.
22 I know it's hard, and I know it's going to be
23 burdensome. But this is a burdensome case. And what
24 we've established through, at least these instances,
25 plus two more that we just referenced in our status

1 report is there are files of investigations of the
2 SNM and many of the defendants in this room that have
3 not been reviewed.

4 Now, they've reviewed three. But I think
5 it's incumbent upon them to find out what
6 investigations of SNM, at least federally, have been
7 done, and to have those reviewed for exculpatory
8 material. Otherwise, what we're saying is that they
9 do not have to look at materials within their
10 constructive possession that might be exculpatory or
11 Rule 16 material.

12 THE COURT: Where did the number 600 come
13 from?

14 MR. CASTLE: That was the first time I
15 heard that today, so --

16 THE COURT: Okay. That's from the
17 Government, though?

18 MR. CASTLE: Yes.

19 THE COURT: It's not something that you
20 found out?

21 MR. CASTLE: No. In fact, I was surprised
22 it was 600.

23 THE COURT: You thought there was more or
24 less?

25 MR. CASTLE: Less, but ...

1 THE COURT: Tell me about the 600 files.
2 When you use that phrase, what are you including in
3 that universe?

4 MR. BECK: What I'm including in that
5 universe is when I asked -- when the United States
6 asked New Mexico Corrections and STIU to give us an
7 estimate, because they don't know. As I think I said
8 to the Court before, these STIU files go with the
9 defendants to wherever they are housed in a facility.
10 And the rest of them are housed in an archive
11 facility. So I said, Shooting from the hip, give me
12 an estimate. And they said, Somewhere around 600.

13 THE COURT: Well, now, I'm getting confused
14 here. I thought --

15 MR. BECK: I think what the Court is
16 confused on, and what I was confused on a little bit
17 here, is I think we're kind of blending two things
18 together here. I think we're talking about the FBI
19 investigations and the STIU files. I think -- and
20 correct me if I'm wrong, Mr. Castle -- but I think
21 Mr. Castle was referring to a document in the FBI
22 investigation that we disclosed after he had found
23 reference to it in another document that we had
24 disclosed from the FBI files. This morning, earlier
25 today, we said that we would -- we have reviewed

1 those three files, and we would review the two
2 additional files that were pointed out to us this
3 morning in the updated status conference.

4 THE COURT: So the State has -- has
5 conducted what you and they estimate to be about
6 600 -- they've conducted about 600 incidents, or
7 something along those lines that --

8 MR. BECK: No.

9 THE COURT: -- that involve the SNM Gang?

10 MR. BECK: No. No, I think that's wrong.
11 So there would be a file on a specific person who, in
12 this request, is referenced as a suspected or
13 confirmed member.

14 THE COURT: Okay. So what you're doing is
15 you got a file, and these are 600 suspected or
16 confirmed SNM Gang members?

17 MR. BECK: That's right.

18 THE COURT: Okay. Hold right there. Let
19 me ask Mr. Castle: Now, is that the -- when you use
20 the word "investigative file," is that what you're
21 thinking of?

22 MR. CASTLE: Well, I was thinking of all
23 kinds of investigations, whether it be federal or
24 state, but I thought I'd lost the state argument, so
25 I didn't pursue that with Your Honor. And so I was

1 focusing on the federal investigations. So --

2 THE COURT: Well, let me -- all right. How
3 many investigative files does the federal government
4 have?

5 MR. BECK: Your Honor, again, we have three
6 files for this operation, for this investigation that
7 led to these indictments. We've been pointed out to
8 two more.

9 THE COURT: You think there is five
10 investigative files of the SNM Gang federally?

11 MR. BECK: Right.

12 THE COURT: And does the Government have
13 any objection to the review of all those files, all
14 five of those files for Brady, Rule 16 materials?

15 MR. BECK: I think we conceded this morning
16 that we don't, Your Honor; that we will review those
17 files.

18 THE COURT: Okay. So -- and then the offer
19 still stands that we'll do the State SNM files, we'll
20 just take those on a -- I mean, 600 is probably more
21 than what I understand the gang actually has. So it
22 may have some former members; it may have some people
23 that were suspected but never confirmed. So 600 is
24 going to be on the high side. I guess, I would not
25 be inclined to produce that, but just -- let's just

1 take these one at a time. And if we need to go back,
2 it sounds like the Government is willing to look at
3 that. And if y'all can't agree, then you can make
4 your pitch to me.

5 MR. CASTLE: Your Honor, with regards to
6 the federal files, I think it's incumbent upon them
7 to go back to their office and find out what
8 investigations were conducted by the FBI and their
9 offices into the SNM.

10 THE COURT: Well, you're willing to do
11 that; right, Mr. Beck?

12 MR. BECK: Right, Your Honor.

13 THE COURT: They're saying they know of
14 five. They're going to do the Brady and Rule 16
15 review of those files. So that covers the federal
16 files. And then we have a little bit of dynamic
17 process to go with the state files.

18 MR. CASTLE: I understand. And I
19 appreciate where the Court is coming from. But this
20 has already been ordered for them to go look for --

21 THE COURT: This is what?

22 MR. CASTLE: This was already ordered, when
23 the original issue came up with Judge Gonzales, was
24 to go back and find out if there were investigations
25 with any of these defendants or with the SNM that

1 might relate to that issue. We were told of two
2 files. Then we found more; we found it, not the
3 prosecution.

4 And so that's not the way it's supposed to
5 work. They're supposed to, on their own, look at
6 materials that are in their possession, or
7 constructive possession, and disclose them. We
8 shouldn't be in here asking for this.

9 So I understand Mr. Beck is saying that he
10 promises they're going to go back and review to see
11 whatever files they have, and then do their mandatory
12 review for Brady and Giglio. But I have to say, it
13 hasn't happened when it was ordered before.

14 THE COURT: All right.

15 MR. BECK: Your Honor -- and I do want to
16 clarify. The way that we do these reviews is we
17 search for the defendants' names and monikers
18 throughout the files, because some of these older
19 files contain, again, hundreds of suspected or
20 confirmed SNM members. So we do not go through and
21 search page by page. We have a -- there is a system
22 that you can search by name or moniker. And those
23 pages come to the front, and that's what we review
24 for Brady and Giglio materials.

25 THE COURT: All right.

1 MR. CASTLE: It sounds like what they're
2 searching for is inculpatory material. For example,
3 there was an individual by the name of Chavirra, who
4 was identified as being a person who may have
5 ordered -- and with a different set of people -- the
6 deaths in Counts 1 and 2. Our client's name wouldn't
7 appear on an investigation that showed that
8 Mr. Chavirra did that murder. It's not going to get
9 the exculpatory information. If they talked to an
10 informant who told them that somebody else did it,
11 and our client's name is not on there, it won't come
12 through their sifting process. Just searching for
13 names is not sufficient. And that's not what's
14 contemplated under the case law. What's contemplated
15 is you have to review what's in your constructive
16 possession, and turn over all exculpatory material,
17 without regards to a certain kind of search engine or
18 search method. They have to look at it.

19 I don't know how large these files are, but
20 if they relate to these counts and these charges,
21 then they need to be reviewed for mandatory
22 disclosures.

23 MR. BECK: We also searched the victims'
24 names and monikers, Your Honor. So whenever a victim
25 or the victims' moniker is mentioned, that would come

1 to the front also.

2 THE COURT: Well, I'm uncomfortable with
3 that search. I think you ought to look at these
4 pages. You know, electronic discovery, I'm all for
5 it, and I'm fully aware of what we're doing with
6 algorithms in the search area, but -- particularly on
7 the civil side -- but I'm uncomfortable with there
8 not being an Assistant U.S. Attorney putting their
9 feet in the shoes of the defendants and the
10 defendants' counsel, and being creative about how
11 this information could possibly be used to benefit
12 the defendant. And I don't think there is an
13 algorithm or search function that does that. I think
14 that takes a human being sitting there putting their
15 feet in the defense lawyers' shoes and saying, Could
16 I use this? So if that's the search that has been
17 done or is contemplated, I don't think that's
18 adequate.

19 MR. BECK: Understood, Your Honor.

20 THE COURT: Mr. Castle?

21 MR. CASTLE: I think the last area -- but
22 when I finish, I'd like to just talk to co-counsel
23 and make sure -- was the list of inmates residing in
24 the Penitentiary of New Mexico North facility,
25 between January 1, 2001 and March 26, 2001. I think

1 the Government has agreed to do it for the date of
2 the offense. But the discovery we had indicates that
3 there might have been discussions -- well, the
4 allegations are there were discussions at the
5 Penitentiary of New Mexico, in which they ordered --
6 some individuals ordered the murder of these two
7 people. And those discussions happened before the
8 date of the offense. And so we chose between January
9 1st and the date of the offense to capture, perhaps,
10 the names and identities of witnesses that could
11 either -- would either dispute or -- obviously, we're
12 hoping to dispute.

13 THE COURT: January 1, 2001 and March 26,
14 2001?

15 MR. CASTLE: Yes.

16 THE COURT: And what was the response, Mr.
17 Beck?

18 MR. BECK: Again, Your Honor, we agreed to
19 disclose the date of the murder to list alternative
20 suspects. Outside of that, again, we asked
21 defendants to come forth with some demonstration of
22 facts why that information would be helpful to them,
23 why it may lead to admissible evidence. And we were
24 open to going outside of that. But they haven't done
25 that. And then the problem with that, again, is that

1 you would have to go back and look at each one of
2 these days and find out who was in there each one of
3 these different days. In 2001, there was no -- you
4 couldn't just go into a computer and print off a
5 spreadsheet.

6 THE COURT: March 26 is the date of the
7 murder?

8 MR. CASTLE: Yes, Your Honor.

9 Just so the Court knows, in the companion
10 indictment, USA versus Baca, 16-CR-1613, it states in
11 that indictment, "In 2001, while in the custody of
12 New Mexico Corrections Department, Frederico Munoz
13 attended a meeting with SNM Gang leaders, in which
14 hits were placed on the two victims in this case."
15 And so all they're alleging is it happened in 2001.
16 Well, we knew it happened before the day of the
17 murder; otherwise, it wouldn't have made any sense.
18 That's why we chose January 1, 2001. We could do
19 weekly --

20 THE COURT: When you made your initial
21 proposal for this, what did you request?

22 MR. CASTLE: We requested January 1st to
23 March 26th. Because in the Baca indictment it says
24 it happened in 2001, which would be between January
25 1st and March 26th. The date of the murder,

1 obviously, it didn't happen, because the murders
2 happened at a different facility.

3 THE COURT: Mr. Beck?

4 MR. BECK: We've disclosed in discovery a
5 list of people who were at that meeting.

6 THE COURT: What date was that?

7 MR. BECK: Offhand, I couldn't tell you. I
8 know that we've disclosed who was at that meeting.

9 THE COURT: Well, it sounded like you were
10 willing to give more than just the date. You didn't
11 want to give January 1st. What did you have in mind?

12 MR. BECK: As I said, Your Honor, I had in
13 mind that if we could be pointed to a date range or a
14 specific date --

15 THE COURT: You don't remember the date of
16 this meeting?

17 MR. BECK: I don't have --

18 THE COURT: Do you know the date of this
19 meeting, Mr. Castle?

20 MR. CASTLE: I apologize --

21 THE COURT: Do you know the date of this
22 meeting?

23 MR. CASTLE: I do not. It only alleges in
24 2001.

25 THE COURT: Well, Mr. Beck is saying that

1 he gave the list of inmates as of the date of that
2 meeting. So it sounds like he's produced two things:
3 One, a list of inmates the day of the murder, and
4 then one, a list the day of the meeting.

5 MR. BECK: No, Your Honor. We have not
6 produced a list of all the inmates at PNM during that
7 meeting. We've produced discovery, and in discovery
8 it talks about who was at that meeting. So we have
9 not produced a list of all the inmates at that
10 facility on the day of that meeting.

11 THE COURT: But nobody knows -- nobody
12 knows the date of that meeting? Is there a date
13 anybody remembers?

14 MR. CASTLE: No, Your Honor. The reason
15 it's important is they may not have been in the same
16 cell blocks, the people they say in these meetings.
17 So we have to look to see if this is even possible.

18 THE COURT: Do you have an idea how far in
19 advance of the murder it was?

20 MR. BECK: I don't, Your Honor. But the
21 United States would agree to go back and look, and
22 produce that date, in addition the list of inmates at
23 PNM North facility on that date, and the list of
24 defendants at PNM North facility on the day of the
25 murder.

1 THE COURT: Here's what I propose, is that
2 we find out the date of the meeting, and back it up
3 two weeks. And then it will be the list of the
4 inmates two weeks before that meeting, up to March
5 26.

6 MR. COOPER: Your Honor, if I --

7 THE COURT: Hold on just a second. Could
8 you live with that, Mr. Beck?

9 MR. BECK: Yes, Your Honor.

10 THE COURT: Live with that, Mr. Castle?

11 MR. COOPER: If I may, Your Honor. We'd
12 also like maybe a list of the inmates who were --

13 THE COURT: I said "Mr. Cooper."

14 MR. COOPER: Yeah, for the record, Bob
15 Cooper, Your Honor, thank you.

16 Judge, we'd also like a list of the inmates
17 who were at the north facility for probably the two
18 weeks thereafter. It's our understanding that
19 Mr. Garcia was, after the murders, transferred back
20 to the north facility. And I think it's important
21 for us to know who was there, who he might have
22 talked to. Because there is also indication in the
23 discovery from Frederico Munoz that there were
24 discussions had between Mr. Garcia and Frederico.
25 Frederico just pled last week. I think it's really

1 important for us to determine who was there, who was
2 in the pods where he was located, and who else was
3 located in that pod.

4 THE COURT: How quickly was he moved out of
5 this unit where the murders occurred?

6 MR. COOPER: He went back that night, I
7 believe. So I would like to know who was there
8 probably for the two weeks thereafter. Because I
9 think that's going to assist us in determining
10 whether or not there was a conversation, and who
11 might have been present. So we would like that
12 information, just probably for that two-week period
13 after his return to the north facility.

14 THE COURT: Well, do you want to speak on
15 that, Mr. Beck?

16 MR. BECK: Yes, Your Honor. I think Your
17 Honor's ruling -- the United States understands Your
18 Honor's ruling: Two weeks before that day, up
19 through March 26, 2001.

20 I just want to raise the issue with the
21 Court that, as I explained, it's going to take time
22 and work to go back and compile these lists from the
23 records that existed in 2001. And so, if the Court
24 is ordering us to turn that over to them, we would
25 ask for a month, instead of the 14 days, for this

1 specific request.

2 THE COURT: Why don't I do this: I'll add
3 three days afterwards to give that. And I'll deny
4 the rest of the request without prejudice. If
5 something turns up from this, that you need it
6 broader, then we can relook at it. Let's get that
7 started.

8 I don't see any problem with 30 days on
9 this one. Do you, Mr. Castle?

10 MR. CASTLE: No, Your Honor.

11 THE COURT: All right. So it will be two
12 weeks before the alleged meeting, and then three days
13 after the alleged murder. And it will be every day
14 in between there. But you'll have 30 days to do it.

15 Mr. Castle, anything further?

16 MR. CASTLE: Thank you, Your Honor.
17 Nothing further.

18 THE COURT: How about any other defendant
19 on this particular motion? Anybody want to say
20 anything?

21 Mr. Beck, do you think there is anything on
22 this motion or these issues that we need to discuss?

23 MR. BECK: Yes, Your Honor. I think Ms.
24 Armijo has something.

25 THE COURT: All right. Ms. Armijo?

1 MS. ARMIJO: Your Honor, in reference to
2 one of the first requests, which was the Leonard
3 Lujan interviews, I have checked with our right-hand
4 paralegal. She said there was an interview with the
5 FBI on 12/13/15, Bates -- I can give the Bates
6 numbers to defense counsel, but I have them disclosed
7 on July 1, 2016; an interview with Mr. Lujan on
8 2/27/14, disclosed on March 5th of 2016; a transcript
9 of Mr. Lujan's interview taken on August 8, 2007, and
10 on September 12, 2007. So I'm assuming that's the
11 interview with police, because he was interviewed
12 initially with state prosecution, and a state
13 detective; I think it was an APD officer. Then, when
14 he gave information on these murders, then he was
15 reinterviewed by the State Police case agents to the
16 Castillo-Garza cases. And they came up within a few
17 weeks and reinterviewed him. And both of those
18 interviews, which would be one of the ones that was
19 specifically requested a little bit ago, was
20 disclosed on March 25, 2016. There was only one 2008
21 interview that we have not disclosed, but we will get
22 that out within two weeks.

23 THE COURT: All right.

24 MS. ARMIJO: But I believe that that has
25 all been disclosed. And if they would like -- you

1 know, the discovery coordinator -- we have no idea.
2 We send stuff to Mr. Aoki. We have detailed letters
3 which state what it is. But we have no idea how the
4 defense is getting it. And the way this is supposed
5 to work, is if they don't have something, and if we
6 say we've disclosed it, they're supposed to go to the
7 discovery coordinator. But I can assure the Court
8 that those were disclosed on March 25, 2016.

9 THE COURT: Mr. Castle, anything else on
10 that?

11 MR. CASTLE: I wasn't disputing that. I
12 was talking about the ones we haven't gotten.

13 THE COURT: All right. It sounds like we
14 have rulings and agreements on that.

15 MS. HARBOUR-VALDEZ: Your Honor?

16 THE COURT: All right. Ms. Harbour?

17 MS. HARBOUR-VALDEZ: Thank you. Cori
18 Harbour-Valdez for Edward Troup.

19 In addition to the pen packets that Mr.
20 Castle has requested as part of his discovery motion,
21 we would like to add a request that named an
22 alternative suspect who actually spoke of my client.
23 His name is Lorenzo Torrez. He was not charged in
24 this indictment, but we'd like to add the pen packet
25 request.

1 THE COURT: Any problem with doing that,
2 Mr. Beck?

3 MR. BECK: Yeah, Your Honor. So I think
4 going back for a second, I see the one problem that I
5 think I mentioned earlier is that it may not exist.
6 To the extent that it does exist, the New Mexico
7 Corrections Department would give it to us. To the
8 extent that it doesn't, again, New Mexico Corrections
9 Department would have to create it. So our position
10 is that they should not have to do that. That being
11 said, if it does not exist, I'm happy to reach out to
12 Ms. Harbour-Valdez, and we can discuss whether we can
13 come to an agreement on how to get that. If not,
14 bring it back before the Court. Or if Your Honor has
15 a ruling now, then --

16 THE COURT: Well, go ahead and do the
17 review of it, if it exists. If it doesn't exist,
18 then you can tell Ms. Harbour-Valdez it doesn't
19 exist. But let's go ahead and do a review of that
20 one.

21 MS. HARBOUR-VALDEZ: Thank you, Your Honor.

22 MR. BECK: Is it Lawrence Torrez?

23 MS. HARBOUR-VALDEZ: Lawrence Torrez. It
24 was listed as both names in the discovery. However,
25 Mr. Castle did not just ask for it, so I'm asking.

1 MR. BECK: Okay. We'll look. Yeah, it's
2 in the motion. We'll look for both of those names,
3 and I'll get with Ms. Harbour-Valdez and let her
4 know.

5 MS. HARBOUR-VALDEZ: Thank you, Your Honor.

6 THE COURT: All right. Anything else from
7 the Government on that motion?

8 MR. BECK: Not from the Government, no.

9 THE COURT: Any other defendant on that
10 motion?

11 MR. LOWRY: Your Honor, may I briefly?

12 THE COURT: Yes, Mr. Lowry.

13 MR. LOWRY: While we're in the discussion
14 of these 600 SNM files -- and I believe Mr. Castle
15 has pointed out a number of matters that the
16 Government should look to -- I don't want the Court
17 to consider silence a waiver. So I just wanted to
18 point this out.

19 One of the recurring themes throughout
20 indictment and the search warrant affidavits in this
21 case that are filed by the Government is that the SNM
22 was organized in response to the prison riot in 1980
23 in Santa Fe. And, of course, the Government bears
24 the burden of proving the existence of an enterprise
25 under the racketeering, and even the VICAR charges.

1 Your Honor, one of the alternative purposes
2 of any kind of group might be something other than
3 the purposes that the Government has set forth in
4 their indictment. And one of the things I'm
5 concerned about is that we need to review these files
6 with an eye towards this intergang warfare that the
7 Government has brought up in a lot of the indictment
8 and the search warrant affidavits.

9 So I just want to plant that bug in the
10 Court's ear that this isn't as simple as, perhaps,
11 what it was even discussed earlier, that the review
12 of these materials needs to go even farther to look
13 for why would a collective of individuals band
14 together? And I would posit to the Court that safety
15 is a primary one.

16 If you go back and look at the history of
17 the Santa Fe riots, unfortunately, what you will
18 discover is what I would characterize as callous
19 indifference to the plight and the conditions inside
20 the facility, even at a time when prison officials
21 knew that a riot was imminent.

22 And what I would ask the Government to do,
23 when they're doing their page-by-page review of these
24 materials, is to look into materials that are
25 relevant to this intergang warfare, which would give

1 credence to a defense theory of why people might want
2 to band together to protect themselves, when you're
3 living inside a corrections facility that
4 historically has demonstrated an institutional
5 failure in that capacity. And I think that's going
6 to be material to the defense case under Rule 16,
7 Your Honor.

8 I'm happy to work with the Government to
9 discuss these and other pen packets that the defense
10 would want, especially on behalf of Mr. Baca. I
11 don't want to waste the Court's time this afternoon.
12 On the alternative, I don't want my silence to be
13 considered a waiver either.

14 THE COURT: Well, I think that the more you
15 want to send Mr. Beck as to theories, I think that's
16 helpful to him. I know when I do my in camera
17 review, I like to have that sort of insight. So I
18 would the encourage you to share it with Mr. Beck, so
19 that when he does that review, he can be thinking of
20 that possible theory and that possible defense.

21 MR. BECK: I just want to note that I
22 haven't agreed to --

23 THE COURT: You personally are going to do
24 it?

25 MR. BECK: We haven't flipped the coin on

1 that one.

2 THE COURT: I'm holding out for you.

3 All right. Mr. Villa?

4 MR. VILLA: Your Honor, I'll try not to --

5 THE COURT: I'm not going anywhere.

6 MR. VILLA: And, Your Honor, I represent
7 Mr. Perez, who joined both Mr. Castle's motions, but
8 more germane the motion that Ms. Strickland argued,
9 which are Counts 6 and 7. And I was wondering if the
10 Court would adjust its order a little bit to reflect
11 some of the rulings that were for Mr. Castle.

12 So, for instance, I think the first issue
13 has to do with the DNA, which I think you made clear
14 what your order is. The FBI files, I think, are the
15 same. But the Government has agreed, with respect to
16 the STIU files, to review those for the suspects in
17 Count 1 and Count 2, as well as the alleged victims.
18 And we would ask that the order be the same for
19 Counts 6 and 7.

20 THE COURT: Any problem with that, Mr.
21 Beck?

22 MR. BECK: If defense counsel gets us a
23 list of those suspects, we would agree to do that,
24 Your Honor.

25 MR. VILLA: That's fine. I think that

1 would dovetail with what we'll get to in just a
2 minute. But the logbooks, I don't know if the Court
3 clearly decided the timeframe. But I agree with Mr.
4 Castle, or perhaps I learned something new from Mr.
5 Castle today. We all did. But I think the timeframe
6 of two months and two months would be much more
7 appropriate than -- I think the Court's order this
8 morning was three months and two days or -- I don't
9 remember exactly what the Court ordered.

10 THE COURT: It was three weeks.

11 MR. VILLA: Excuse me, three weeks. That's
12 what I meant to say.

13 THE COURT: Three weeks and then three
14 days.

15 MR. VILLA: So we would ask that the Court
16 reconsider that, given the information Mr. Castle
17 provided. And this incident occurred in 2014, so
18 those logbooks should still exist.

19 THE COURT: Mr. Beck?

20 MR. BECK: I agree that the logbooks still
21 exist, Your Honor. But I think the situation was
22 different when Mr. Castle came forward with an
23 allegation that included a meeting in 2001, versus
24 here, again, we don't have anything more. So I think
25 the Court's ruling: Three weeks and three days was

1 appropriate. If more information is brought to
2 light, if they have facts that demonstrate that a
3 wider time period may be germane to their case, then
4 the United States is willing to revisit that.

5 THE COURT: Let's get this into your hands;
6 see if there is anything there. I mean, you can come
7 back if you find something, and make a stronger case.
8 But right now, let's work with what we've got.

9 MR. VILLA: And, Your Honor, maybe I'm not
10 as concerned as much about the front end, you know.
11 I agree, we don't have the exact same facts as in Mr.
12 Castle's case. But the back end after the incident,
13 Mr. Castle talked about the movements and the steps
14 that are taken by intelligence and Department of
15 Corrections as they investigate these things, and
16 sort of, you know, moving people because they're
17 suspects, moving people because they're at risk,
18 moving people so they could be questioned. Those
19 sorts of movements, I would anticipate might occur
20 beyond the three days. So that's why I'm asking the
21 Court to consider a lengthier period of time after
22 the incident.

23 THE COURT: Let's see what we got. Then,
24 if you want to come back --

25 MR. VILLA: Okay, Your Honor.

1 The next issue would be the pen packs. The
2 Government, I believe, agreed to produce those for
3 the defendants and the alleged victims in Counts 1
4 and 2. And I would ask that the Court order the same
5 for Counts 6 and 7.

6 MR. BECK: We don't object to that, Your
7 Honor.

8 THE COURT: All right.

9 MR. VILLA: And then, the last thing, I
10 think, was the list of inmates in the pod at the
11 time. And I believe it was pods -- for Counts 6 and
12 7, we're talking about pods 1A and 1B. I think the
13 Government agreed to produce that with respect to Mr.
14 Castle and PNM. We would ask that for Southern New
15 Mexico, where this incident took place. And I'm not
16 talking about the six month timeframe, but at least
17 the date of the incident.

18 MR. BECK: Your Honor, the United States
19 would object to putting that in the order, when it's
20 not requested in the motion. But, again, if defense
21 counsel reaches out to us and requests that
22 information before coming to the Court with it, we
23 may be very willing to get NMCD to give it to us and
24 turn it over.

25 THE COURT: Well, putting one of these

1 shows on takes a certain amount of effort. Let's see
2 if we can get a little closure here. If you're
3 willing to do it, why don't I just require you to do
4 it. What exactly is the timeframe?

5 MR. VILLA: Your Honor, it's March 14 --
6 March -- am I getting this? I'm sorry, March 7,
7 2014, was the date of the alleged murders that Counts
8 6 and 7 --

9 THE COURT: So these are going to be inmate
10 lists?

11 MR. VILLA: Yes, for pods 1A and 1B at the
12 Southern New Mexico Corrections facility.

13 THE COURT: Let's do two weeks before, and
14 then three days afterwards. We'll start there.

15 MR. VILLA: I think that's all I had, Your
16 Honor.

17 THE COURT: All right.

18 MR. BECK: One second, Your Honor.

19 THE COURT: Hold on just a second. Can you
20 live with that, Mr. Beck?

21 MR. BECK: Yes, Your Honor. We'd ask
22 again, when the Court's going to order that that the
23 Court give us 30 days for that request instead of 14
24 like the others.

25 THE COURT: All right.

1 MR. VILLA: Fair enough.

2 MR. BECK: And while we're going back for a
3 minute, we looked at -- during the lunch hour we have
4 disclosed three -- excuse me, 10 recordings of the 13
5 that Ms. Strickland said she believes are
6 outstanding, and she doesn't have. We don't know
7 that those other three exist. But as we said this
8 morning, we're going to go back and look. We also
9 did disclose the DNA reports on March 25, 2016,
10 through the discovery coordinator, so they should be
11 on there. And we've forwarded the PDF copies of
12 those documents to Ms. Strickland. So just to clear
13 that up.

14 THE COURT: All right. Anything else, Mr.
15 Villa?

16 MR. VILLA: No, Your Honor.

17 THE COURT: Mr. Lowry, did you have
18 something else?

19 MR. LOWRY: Your Honor, while Mr. Villa was
20 referencing the Molina murder, I would also ask, for
21 the sake of closure on that issue, if we could also
22 move the discovery to the Level 6 in Santa Fe, where
23 my client was housed at the time of the Molina
24 murder. Obviously, my client was the only one who
25 was nowhere near the southern facility. So just

1 having the information with regard to Southern would
2 be insufficient for our case. And, in fact, we'd
3 need the pen packs for both Level 6 for, you know,
4 that timeframe, and the individuals that were
5 transferred from Level 5 to Southern the day before
6 Mr. Molina was assaulted.

7 THE COURT: Mr. Beck?

8 MR. BECK: I guess I'm confused at how many
9 parts there were to that additional request. It
10 sounded to me like he's asking for the list of
11 inmates at the Level 6 in PNM on the day of the
12 Molina -- the alleged Molina murder, and also a
13 certain number of pen packs.

14 THE COURT: Well, let's start with the list
15 of inmates.

16 MR. BECK: With the list of inmates, again,
17 the United States would object to that not being in
18 the order, noting that for the record.

19 THE COURT: I'll note in the order that it
20 wasn't raised in the motion.

21 MR. BECK: Right. So if the Court is
22 inclined to grant that request -- which it sounds
23 like the Court is, and that's understood -- the
24 United States would ask for the same thing, for the
25 dates that the Court's willing to order. If it's

1 just the day of the murder, if the Court is going
2 outside of that --

3 THE COURT: Let's just do the date of the
4 murder on this one.

5 MR. BECK: We can do that in 14 days, then.
6 We don't need the additional two weeks.

7 THE COURT: All right. And what else did
8 you want?

9 MR. LOWRY: That's it for now, Your Honor.
10 I mean, I'm happy to work with the Government to
11 identify other matters.

12 THE COURT: What did you want, the pen
13 packs?

14 MR. LOWRY: Well, Mr. Beck is absolutely
15 correct. I'm more concerned, not with the pen packs
16 per se, but with the list of inmate housing
17 assignments during that timeframe. Because the way
18 the defense understands the nature of their argument
19 is, somehow Mr. Baca was able to communicate with
20 individuals who were outside of Level 6. And,
21 frankly, I think that was practically impossible to
22 have happened, if the procedures and policies were
23 being followed within the institution.

24 So it would be nice for the defense to
25 know, from materiality in preparation of the defense,

1 who was housed in Level 6 in the two weeks before the
2 murder, and were there any transfers between Level 6
3 and Level 5? And then from Level 5 down to Southern.
4 And I believe the transfer, as alleged in the
5 indictment, took place -- which would have been March
6 6, 2014, the day before the allegation of the Molina
7 murder.

8 THE COURT: All right. Well, let's just
9 leave it, as you get the inmate list for the date of
10 the murder for that facility, and then you can talk
11 to Mr. Beck about pen packs and anything beyond that.

12 MR. LOWRY: Thank you, Your Honor.

13 THE COURT: Anything else on that motion?

14 On this third motion, the motion for
15 specific discovery, that's 678, is there anything
16 else on that? I mean, we sort of took the first
17 motion for specific discovery, but is there going to
18 be other things?

19 MR. BURKE: Not much, Your Honor.

20 THE COURT: But there is some?

21 MR. BURKE: There is some.

22 THE COURT: All right. Let's do this:
23 Let's go ahead and take our break at this point, and
24 then we'll come back in and that will be the first
25 thing front and center.

1 The other thing that I want us to think
2 about is the Number 698 that has just been filed. Is
3 that something that the Government wants to go ahead
4 and discuss while we're together? One possible
5 procedure is, if you're not totally prepared, I could
6 hear from Mr. Villa on it, and then --

7 MR. BECK: Is there a title?

8 THE COURT: Yeah, it's the joint motion for
9 disclosure and production of confidential informant.
10 There is another one, Document 700, which is the
11 defendant's motion to show cause.

12 MR. BECK: Yeah, we're not ready to discuss
13 those, Your Honor.

14 THE COURT: I guess what I was thinking
15 about doing -- think about this during the break --
16 could I go ahead and hear argument on those two
17 motions? I won't rule; let you file a response, and
18 then rule, perhaps, without getting back together?

19 MR. BECK: Your Honor, we'd object --

20 THE COURT: Just think about it, talk about
21 it. We'll take our break now, and then we'll come
22 back in and we'll start with the second motion for
23 specific discovery.

24 (The Court stood in recess.)

25 THE COURT: All right. Mr. Burke?

1 MR. BURKE: Thank you, Your Honor. I would
2 like to make a record on my motion. It won't take
3 long. I wanted to adopt the arguments of
4 Ms. Strickland on her motion to compel, Document 668.

5 I wanted to adopt the arguments of Mr.
6 Castle on his motion for discovery, which was
7 Document 539, particularly the following: His
8 arguments regarding the three tiers of authority that
9 the Court has; due process and Giglio, Rule 16, and
10 the Court's supervisory authority.

11 I adopt his argument that this would be an
12 appropriate case in which the Court might exercise
13 its supervisory authority. And my observation is
14 that the Court is doing that to some degree.

15 I adopt the -- again, the authority cited
16 in our reply, which is Document 712, as well as the
17 authorities in the supplemental filing last night;
18 particularly, your statement in the Hykes case that
19 evidence being material might be -- is of a strong
20 indication that it will play an important role in
21 uncovering admissible evidence, aiding witness
22 preparation, or assisting impeachment or rebuttal.
23 The law regarding Rule 16 is the minimum law. The
24 law relating to accomplice testimony should be taken
25 into consideration, as well as the duties of a

1 prosecutor to investigate, and the cite that the
2 prosecution team can include state and federal
3 authority, citing Kyles.

4 I adopt the statement that is in our papers
5 of Judge Matsch in the McVeigh case, that all doubts
6 regarding disclosure should be resolved in favor of
7 disclosures, as well as the cites from the U.S.
8 Attorney's manual and the Ogden memo, which are in
9 our papers.

10 Finally, I adopt Mr. Castle's comments
11 about what will happen if the Government waits until
12 mid February, our trial having been placed on the
13 trailing calendar for March 6, 2017.

14 Your Honor, the Government's arguments in
15 opposition to our request -- and I understand that
16 there is -- the option is not as strong as it was
17 when we began the day, but the first argument is that
18 we just don't know whether we can get the New Mexico
19 Corrections Department to give us this stuff, as
20 though they were some faraway, unreachable entity
21 that was totally at arm's length.

22 And in this regard, Your Honor, I would
23 remind the Court, or ask the Court to consider
24 Exhibit B to our reply. And it refers to an FBI
25 document. And on page 6 of that document, the

1 following appears: "Additionally, this investigation
2 will be coordinated with the U.S. Attorney's Office;
3 the Second Judicial District Attorney's Office,
4 Albuquerque; the Third Judicial District Attorney's
5 Office, Las Cruces; and appropriate local
6 investigating agencies."

7 On page 7 of that report, it is stated by
8 the FBI in their initial report on the investigation
9 that preceded this indictment, "The Albuquerque
10 division will initiate the investigation of captioned
11 matter. At the appropriate juncture, the Organized
12 Crime Unit proposal will be authored to incorporate
13 joint efforts of the participating law enforcement
14 agencies, including the Albuquerque Police
15 Department, the Bernalillo County Sheriff's Office,
16 the New Mexico Department of Corrections, which
17 includes the New Mexico Department of Probation and
18 Parole. In addition to the assistance of the
19 Albuquerque Police Department, the Bernalillo County
20 Sheriff's Office, the New Mexico Department of
21 Corrections, AUSA Reeve Swainston has expressed the
22 full cooperation of the United States Attorney's
23 Office."

24 This has been a joint investigation from
25 the beginning. And that is Exhibit B. As it turns

1 out, Exhibit B to the reply, in the upper left-hand
2 corner of that document, reflects a case number
3 ending in AQ62017. The serial number on that
4 document is Number 1. The investigation began
5 September 14, 2008. They were involved integrally
6 from the beginning. This is a joint investigation.

7 With regard to the contention that this is
8 a fishing expedition, I'm going to try to show a
9 document to the Court, which is Troup Exhibit A.
10 Your Honor, I would call the Court's attention to the
11 paragraph in the middle of the page that begins, "At
12 the initiation of the meeting" -- and this is a
13 September 2013 -- or actually, August 2013 meeting --
14 "it was stated that the evidence was not sufficient
15 to merit a federal prosecution." That suggests
16 Brady.

17 The next paragraph: "After AUSA Tierney
18 allowed the case agent to present additional evidence
19 and information going on, he expressed interest.
20 AUSA Tierney requested that the case agent put
21 together binders containing the following information
22 for each suspect and each cooperator witness for the
23 Fred Sanchez murder from 2007." That is Count 3,
24 Your Honor.

25 The report goes on, and it lists the things

1 that a prosecutor would want. And we want those
2 things, too. And they have them. They are in
3 binders.

4 If one turns to the next page, if I can do
5 this: 11 days later, in the paragraph beginning, "On
6 August 26, 2013, the case agent met with AUSA Tierney
7 and AUSA Jack Burkhead in Albuquerque, and provided
8 the requested material on the Fred Sanchez murder."

9 Those binders exist. They are available.
10 They should be provided to us. We are not on a
11 fishing expedition. We are merely asking for
12 documents that we have been able to glean do exist,
13 from the discovery that we have been able to review.

14 The Court has the authority to tell the
15 prosecutors to get the binders to the defendants
16 within a week. I suggest that that would be a fair
17 thing to do. It would promote justice. It would
18 allow us to mount a defense. And frankly, it would
19 take one issue off the prosecution's plate, because
20 they could then concentrate on other things.

21 And, Your Honor, the same is true of the 17
22 items that we listed in our motion, and that
23 co-counsel and I outlined in our reply. We didn't
24 just make them up. We're not fishing. We've seen
25 things that tell us these documents exist. And we

1 believe the Court should order them. I appreciate
2 very much the Court inquiring of the prosecutor,
3 isn't it true, sir -- and I asked it in a leading
4 way, because that's my inclination -- but the phone
5 call: You could call them; couldn't you call them?
6 And the prosecutor says, Yeah, we could call the New
7 Mexico Corrections Department. Do they listen to
8 you? Yeah, they do. And I suggest that, if Your
9 Honor directs them to do that, they will do that.
10 And the New Mexico Corrections Department will find a
11 way to get all of these requests answered promptly.
12 And that is our request. And that's why we outlined
13 them. They all exist.

14 There is one that was master roster, I
15 think it's Number 50 -- and I could be wrong about
16 that -- we said we want the master roster. The
17 prosecution poked fun and said there is no master
18 roster. And then we presented a document that's in
19 the reply, there is a master roster. And we'd like
20 to get that, too. It's relevant and it's material.
21 And those are our requests.

22 I could go through -- my list was a little
23 different than Mr. Castle's -- I added a few and took
24 out one. And so I'd be happy to do that, if the
25 Court would like to do that. Although I note that

1 the Court has made some orders with respect to some
2 of those requests.

3 THE COURT: Well, is there anything in your
4 motion that I haven't ruled on that you need action
5 on?

6 MR. BURKE: Well, there is, Your Honor.
7 Our Number 1, we asked that unredacted copies of all
8 documents provided in discovery be made available.
9 They black out the names. We know that they're
10 informants. And in some other places we can figure
11 out who they are. But they should stop redacting
12 these documents in discovery. There is no good
13 reason to do that. So that's a request that's
14 different than Mr. Castle's. That's Number 1.

15 You've covered 2. In Number 2, Your Honor,
16 I did --

17 THE COURT: Well, let me deal with Number
18 1. Mr. Beck?

19 MR. BECK: Your Honor, we've redacted a few
20 of the names. I think they assert they're
21 eyewitnesses and earwitnesses and co-conspirators.
22 We've done that because we consider them to be
23 confidential informants. We don't think that the
24 defense has made the showing that this Court required
25 in United States against Aguilar. That's at

1 paragraph 1, page 8 of our response brief.

2 We've also done it because of serious
3 concerns that have been voiced in this hearing and
4 others about names of those persons getting out
5 amongst the defendants.

6 And we've had -- we've tried to put in
7 place measures to safeguard that to some extent: The
8 tablets. But, as I'm sure the Court is aware, those
9 have not been successful. The defendants have shared
10 the tablets amongst each other, and the names have
11 gotten out.

12 So those are the two reasons that we have
13 redacted a number of those names.

14 MR. BURKE: Your Honor, one of my
15 colleagues --

16 THE COURT: Let me make sure that I
17 understand. You're saying what's been blacked out
18 are all informants?

19 MR. BECK: Yes. The confidential
20 informants, cooperators.

21 THE COURT: So I guess it would seem to me
22 that we'll have to take these one at a time and make
23 the showing under Aguilar that's necessary for the
24 Court to order disclosure. I don't know if you want
25 to undertake that this evening, or if you're -- if

1 that's for another day, or what.

2 MR. BURKE: I think it is for another day.
3 Even this is clarifying, Your Honor, and we can move
4 forward.

5 I do need to make a record regarding my
6 client, Mr. Troup. He's not caused any problems.
7 And I also want to make a record regarding the
8 tablets. One of my colleagues filed a motion
9 regarding the recent search warrant, and pointed out
10 the truth of the matter is that the tablets have not
11 been misused. The discovery on there is what was put
12 on there for the very purpose that it was available
13 to others. And I just wanted to make that record.

14 Your Honor, Number 2, I happened to list
15 all of the FBI files that were known to me in that
16 reply. And then it turns out Mr. Castle found two
17 others. And those were attached to the appendix to
18 the status report that he filed. So that may help
19 the Government to look further regarding those files.
20 They should be available. The FBI should be able to
21 press a button and say, Give me the file for all of
22 these particular case numbers. And the chances are
23 that those documents are one of two things: They're
24 either inculpatory or exculpatory. And what we get
25 in discovery is the inculpatory documents. But what

1 we want is the exculpatory documents.

2 THE COURT: How many files did you have
3 listed on your -- three?

4 MR. BURKE: Your Honor, in Document 712,
5 page 12, I list six -- excuse me, five. And Jim
6 Castle found two others, which are in the appendix to
7 the status report that he filed prior to the hearing.

8 THE COURT: And these are federal files?

9 MR. BURKE: They are FBI case numbers, just
10 like that.

11 MR. BECK: So I think we've already
12 discussed these at length. The United States would
13 point out that Exhibit B, that was shown on the
14 monitor earlier, was a case from 2008, which the
15 United States did not prosecute, did not indict.
16 Those case agents are not involved in this
17 investigation that led to these indictments. Just
18 point that out for the record. We understand that
19 the Court's already ruled on those, but I'm just
20 pointing that out for the record.

21 THE COURT: So you're going to look,
22 though, at this file?

23 MR. BECK: That's what the Court's ordered,
24 yes.

25 MR. BURKE: Your Honor, with Number 3, I

1 believe that the Government will be getting the
2 Security Threat Intelligence Unit files on the
3 inmates who were at Southern New Mexico Corrections
4 facility on June 16, 2007, unless I misunderstood the
5 concession that I thought I heard earlier.

6 MR. BECK: Yeah, that is a
7 misunderstanding, Your Honor. I think what we've
8 agreed to is we've agreed to review the STIU files
9 for the defendants. And we've agreed to review the
10 STIU files for the list of suspects that were
11 identified by Mr. Castle in the first specific
12 discovery motion. We've agreed to review the STIU
13 files for suspects that I believe Mr. Villa will
14 point out to us from the second discovery motion.
15 And that is it at this time.

16 So that same thing would go here. We will
17 still review the defendants' STIU files, which I
18 think covers part of this Number 3, but we have not
19 been provided any information on other suspects, and
20 we have not agreed to review the STIU files on all
21 inmates who are SNM CF on June 16, 2007.

22 MR. BURKE: Well, they should, Your Honor,
23 because this was a homicide that happened -- happened
24 in a particular pod. And there were approximately a
25 dozen people in the pod, and all of those people are

1 suspects, and all of those files should be provided
2 to us, in my opinion.

3 THE COURT: I'll leave the ruling the way
4 we hammered it out earlier.

5 MR. BURKE: Your Honor, Number 4 is
6 criminal history impeachment materials, STIU files,
7 for any cooperating informant witness. There was
8 quite a bit of discussion about that earlier in the
9 hearing. But we really do have an absolute need to
10 fully investigate each and every government
11 informant. And I don't know how we can possibly go
12 to trial, if we don't get -- in March -- if we don't
13 get that information soon.

14 Number 5 is the pen packs, and all inmates
15 housed in the blue pod on June 17. I set forth our
16 argument in there. I note that the Court has
17 repeatedly cautioned the prosecutors against
18 gamesmanship and concealment. And I don't understand
19 why we don't have those pen packs by now.

20 MR. BECK: I guess I'm responding to that
21 one. So the pen packs for FS, we said we would give
22 that over. For the other pen packs, we said that we
23 would give the defendants' pen packs over.

24 I understand this request to be all inmates
25 housed in blue pod on June 17, 2007, which goes

1 beyond that which the Court's ordered, which the
2 United States has agreed so far in this hearing. I
3 think the way that we've been viewing it is that,
4 like the STIU files, if the defendant has or the
5 defendants have specific suspects they believe, we
6 would request of New Mexico Corrections Department,
7 if those exist, that they turn them over. And if
8 not, we would give them that information and go from
9 there with the corrections department's request to
10 not provide those, or maybe work out some kind of
11 deal where they would print those out.

12 So I think the Court has spoken on that
13 one. But not in this motion.

14 MR. BURKE: I've stated my position, Your
15 Honor.

16 THE COURT: All right. Do you have
17 anything -- I don't want to cut you off, but I mean,
18 is there anything else that we haven't -- that I
19 haven't already ruled on?

20 MR. BURKE: Well, the next one has been
21 given short shrift. I think we need more information
22 about the SNM that they have available. They've made
23 the SNM the linchpin of this case. And they're
24 acting like we're asking for the moon, the sun, and
25 the stars, to say, Give us what files you have on the

1 SNM. But the SNM is what this case is all about. So
2 that's a little different than what we've argued
3 about before.

4 THE COURT: Well, I think we've talked
5 about how we're going to review the documents at the
6 prison.

7 MR. BURKE: And then the other one that's a
8 little different, Your Honor, was last one, Number
9 16 -- actually, the next to the last. The documents
10 relating to the New Mexico Department of Corrections'
11 Guidelines for Assessing, Classifying, and Validating
12 an Inmate. We have all these documents where it says
13 "known member of the SNM" or "validated member." But
14 we don't have the criteria by which those assessments
15 were made. We're entitled to that.

16 THE COURT: Mr. Beck?

17 MR. BECK: The United States, as pointed
18 out in the brief doesn't -- disagrees that the
19 defendants would be entitled to that information.
20 Again, that's the Corrections Department's --
21 assuming -- I would assume guidelines, procedures,
22 how they classify and consider those. And so I don't
23 think that -- again, I don't think it's proper for
24 us -- I don't think we have custody or control over
25 those specific regulations and guidelines, as opposed

1 to actual files.

2 And then, the second point being the way
3 that the New Mexico Corrections Department or STIU or
4 STG classifies defendants as being a member,
5 validated, suspected, of the SNM, does not fall under
6 Rule 16. Because what we have to prove in this case
7 is not that STIU or New Mexico considered these
8 defendants to be members or suspects of the SNM.
9 It's that they actually were. So the way that New
10 Mexico Corrections Department classifies these
11 defendants is actually irrelevant to any matter at
12 this trial. So it wouldn't be admissible.

13 MR. BURKE: This may be for another day,
14 too, but they shouldn't be permitted to testify that
15 so and so is a member of a gang, if they're not
16 willing to tell us what the criteria is for
17 membership.

18 THE COURT: Will you have people from the
19 Department of Corrections testifying that so and so
20 was a member of the gang?

21 MR. BECK: I think we will have -- again, I
22 don't think that we've laid out a trial plan. I
23 would expect that we're going to have corrections
24 department officers, a gang expert, testify that
25 based upon the evidence, and based upon their

1 experience, these qualities of the defendants:
2 Tattoos, statements, letters, all prove that they are
3 in the SNM. And those expert materials certainly
4 will be subject to the regular discovery rules in due
5 time.

6 THE COURT: I guess if the -- I guess if
7 you're going to have corrections people come in and
8 say Mr. Baca is a member of the SNM Gang, then I
9 guess I do think you should produce something that
10 indicates how they make that determination.

11 If, on the other hand, you're going to have
12 an expert do it, or if you're going to have other
13 testimony establish that, then I would be inclined to
14 deny the request. So at the present time, I'll deny
15 the request. But keep in mind that if you decide
16 you're going to prove up gang membership with
17 determinations by prison officials, you'll need to
18 produce the criteria by which they're determining
19 gang membership.

20 MR. BECK: Understood, Your Honor.

21 MR. BURKE: Thank you, Your Honor. Because
22 where that goes, of course, is a Daubert hearing, in
23 which that would be discoverable.

24 And then finally, Your Honor -- again,
25 there was great snickering at this request: "Any and

1 all documents in the Government's possession relating
2 to the philosophy, practices, and activities of the
3 SNM in the Department of Corrections." But that,
4 once again, is the gravamen of the indictment. They
5 are saying that the SNM has these rules and these
6 philosophies. What evidence is there of that? The
7 defense is entitled to receive that information.

8 MR. BECK: I think a lot of that
9 information, Your Honor, is in the discovery that
10 they've been provided, in the 302s, the statements of
11 other defendants, the statements of other people
12 involved in the gang throughout the years.

13 Again, I don't think that this request is
14 proper in the criminal context under Rule 16, or
15 under any constitutional obligations that we have.

16 THE COURT: Well, I think we've worked out
17 the mechanism for getting some of that information.

18 MR. BURKE: Yes, Your Honor.

19 THE COURT: There may be some in file
20 Number 599 that we never get. But I think we got a
21 mechanism in place for you to get some of that.

22 MR. BURKE: I agree with you, Your Honor.

23 THE COURT: And you can come back, if some
24 of these documents you're going to get as a result of
25 this hearing, you can come back and say, Well, this

1 is what we found. And I can take another look at it.

2 MR. BURKE: I will be doing that, Your
3 Honor.

4 One thing, Your Honor, could I ask for a
5 ruling on Number 15, our master roster request, which
6 I pointed in our reply there are documents. I think
7 you commented on that.

8 MR. BECK: Yeah. I think the earlier
9 classification was that we poked fun, and that they
10 found that document and presented it to us -- and I
11 wish I had it in front of me, but I think it was
12 provided as an exhibit to their reply -- I put that
13 statement -- indeed, it's page 3 of 6 of Document
14 712-4. It's talking about what someone interviewed
15 by -- someone interviewed in a 302 report said during
16 this interview, that there is a master roster known
17 as the Bible within the corrections department,
18 printed out and handed to people. I have put that in
19 front of the New Mexico Corrections Department, and
20 I've asked them. And as we've said in the briefing,
21 no one knows what that document is.

22 THE COURT: What do you think the master
23 roster constitutes?

24 MR. BURKE: Well, I believe what I'm
25 reading, Your Honor. It says, "The master roster

1 contains sensitive material, known as the Bible
2 within the corrections department. Two copies were
3 printed and provided to each facility." That's what
4 I believe it is, since that's what it says.

5 MS. HARBOUR-VALDEZ: And it says it was
6 provided by the Department of Corrections, Your
7 Honor.

8 THE COURT: So you've taken that
9 description --

10 MR. BECK: Right. And again, what they're
11 reading is a source report. That's someone telling
12 them that. I have shown that statement --

13 THE COURT: Who is the source of this?

14 MR. BURKE: It's another one of those FBI
15 reports, Your Honor.

16 MR. BECK: It says that it's Geraldine
17 Martinez, who I believe was -- it says in this source
18 report that she was a law librarian at the SNM CF
19 facility, I believe.

20 MS. HARBOUR-VALDEZ: But to answer your
21 question, Your Honor, the source is someone who is
22 not named. It says, "Source who is not in a position
23 to testify." So we don't know who the person is.

24 MR. BECK: Right. So what I'm saying is
25 that came from a source saying that Geraldine

1 Martinez provided these things. I have taken that
2 document in front of the NMCD, and they have read it
3 with their own eyes, and don't know what that is.
4 And they've asked others in the corrections
5 department, and they don't know what that is.

6 THE COURT: And the status of Geraldine
7 Martinez?

8 MR. BECK: Right. So that's a 2001 source.
9 So we don't know the status of Geraldine Martinez.

10 THE COURT: Where is that person?

11 MR. BECK: We don't know. That's what
12 we're saying.

13 THE COURT: But that was the librarian?

14 MR. BECK: That's what the confidential
15 source states in this statement, was that Geraldine
16 Martinez was the law librarian at this point.

17 THE COURT: And made that statement?

18 MR. BECK: Right.

19 MS. HARBOUR-VALDEZ: No, Your Honor, she
20 didn't make the statement. The source, who is
21 unnamed, is saying that Geraldine Martinez obtained a
22 copy from someone at the Department of Corrections,
23 and provided it to members of the SNM.

24 MR. BECK: Right.

25 THE COURT: And we don't know where this

1 Geraldine Martinez is?

2 MR. BECK: No, Your Honor.

3 THE COURT: If the representation at the
4 present time is the Government cannot locate this
5 document, then I have to deny the request. I would
6 like the Government to poke around a little bit more.

7 MR. BECK: We have, Your Honor. The
8 beginning of that source report lists a New Mexico
9 Corrections Department employee, officer, however you
10 want to classify that person, that was there. That
11 person is no longer with the corrections department.
12 The corrections department is trying to track down
13 that person to at least interview him, and ask him
14 who was there in 2001, whether he knows what this
15 document is.

16 THE COURT: Why don't we also try to have
17 the FBI locate Geraldine Martinez, and put that
18 document in front of her, and see if -- you know, see
19 if she -- if I've got two people confirming that a
20 document exists, it gives me a little bit of pause.
21 If it's just one unnamed source, then --

22 MR. BECK: Well, no, I think -- and I'm
23 sure I'll be corrected -- I think it is one unnamed
24 source who is confirming that this document exists,
25 and that two copies were provided. No one else,

1 except for the source, has said that document
2 actually exists.

3 THE COURT: Right. But I guess, if
4 Geraldine Martinez says, Yeah, I got a copy, and I
5 handed it to the SNM Gang, I think that would be
6 important. So I'd like to track it down. I won't
7 order the Government to do any production. It's
8 something they don't know exists at the present time.
9 But I do think we ought to take it one step further,
10 and see if we can find this Geraldine Martinez.

11 So that will be the ruling: Be denied
12 without prejudice. See if we can get more
13 information on it.

14 MR. BURKE: Very well. Thank you.

15 THE COURT: Anything else you need rulings
16 on, Mr. Burke?

17 MR. BURKE: Not now.

18 THE COURT: Ms. Armijo has something here,
19 so you may want to stay at the podium for a second.

20 MS. ARMIJO: Your Honor, one of Mr. Burke's
21 first -- or his Troup Exhibit A refers to binders
22 that they are saying that we have in our possession.
23 It was the meeting regarding Mr. Tierney and Mr.
24 Burkhead in the Albuquerque office. We disclosed
25 this document because, when we were ordered by the

1 Court to go back and find any files that the U.S.
2 Attorney's Office had in reference to the SNM, this
3 was the file -- this FBI number was the file that we
4 came up with. And unfortunately, when the file was
5 sent to the Albuquerque office, Mr. Burkhead and
6 Mr. Tierney don't know where it is. It's
7 disappeared. But they have no file that they were
8 ever in possession of, or -- I think Mr. Burkhead was
9 actually the assigned AUSA. And he -- they looked
10 high and low for it for a very long time in offices
11 everywhere. We've looked in Las Cruces, to the prior
12 AUSAs who were involved in that investigation. As
13 best we can tell, it was sent to the Albuquerque
14 office. And nobody knows where it is.

15 That being said, what we did do is we went
16 back and we asked the FBI if they could look up the
17 numbers of the reports from this investigative file.
18 And we have been disclosing those.

19 So to say -- if the Court orders us to
20 disclose binders that we are in possession of from
21 this investigation, we don't have them. But we have
22 done our best to replicate anything that was in
23 there.

24 THE COURT: If they turn up --

25 MS. ARMIJO: If they turn up, you'll be the

1 first to know, Your Honor. But we have done our
2 best. But I think that was back in February. It was
3 shortly before Your Honor took over the case.

4 THE COURT: All right.

5 MR. BURKE: I have a comment.

6 THE COURT: Mr. Burke?

7 MR. BURKE: In the document -- this
8 particular document, September 2013. The serial
9 number is 603 for that case file, ending in 017. The
10 document that is Exhibit B is serial Number 1 for the
11 same case number. There were 602 documents in that
12 file that exist now actually. Because the FBI can
13 press a button and say, Give me all of that
14 particular case file. And I believe that's what they
15 should be ordered to do. Because what has happened
16 instead is the FBI is looking for some things, and of
17 course, they are inculpatory, and they find those.
18 But they can reconstruct that, if they're ordered to
19 do that. And I'm asking the Court to do that.

20 THE COURT: Have y'all -- is that an
21 accurate description of what could happen to recreate
22 the file?

23 MR. BECK: I think that's what the Court's
24 ordered. I think what Ms. Armijo was referring to is
25 that these binders do not exist.

1 THE COURT: The binders themselves?

2 MR. BECK: The file that the Court has
3 already ordered us to go back and look through is
4 what we have produced. And we've already said --
5 you've already ruled that we're going to do that
6 again. So --

7 THE COURT: Okay. Anything else, Mr.
8 Burke?

9 MR. BURKE: No, Your Honor.

10 THE COURT: All right. Thank you, Mr.
11 Burke.

12 MR. BURKE: Thank you.

13 THE COURT: Anything else? I guess that
14 takes care of the motions that were --

15 MR. BECK: Nothing else on that from the
16 Government, Your Honor.

17 THE COURT: And those are the three motions
18 that were noticed for today's hearing.

19 Let me put my toe into a few items and see
20 what happens. Mr. Villa has filed a motion, 698. I
21 understand that you do not --

22 MR. BECK: Yeah, your Honor, we are not
23 prepared to discuss that. We're not prepared to hear
24 argument, give argument. I'm sure the Court can
25 appreciate, just like the Court likes to have issues

1 fully briefed before the Court hears them, the United
2 States likes to have that opportunity to put pen to
3 paper, brief up a response. And afterwards, if the
4 Court has clarifications or issues, we can tackle it
5 at that time. But I'm sure the Court has been
6 working hard to prepare for this, as have we. And we
7 just have not at all prepared to hear or articulate
8 points in response to that motion. So we do oppose
9 having any kind of argument on that motion today,
10 Your Honor.

11 THE COURT: Mr. Villa, you called and asked
12 Ms. Wild to have me take up this motion that you
13 filed. What -- given Mr. Beck's statements, what do
14 you want? What are you wanting to do today with
15 that?

16 MR. VILLA: Your Honor, I called Ms. Wild
17 on a number of matters yesterday, and I probably
18 should have been more clear with her about what my
19 priorities were. But I think, in fairness, if I were
20 in the Government's shoes -- I mean, they're still
21 within their deadline to file a response. If I were
22 in their shoes, I would understand.

23 So I'll defer to the Court. I'm happy to
24 present my argument. I mean, I certainly would enjoy
25 the benefit of a response to argue. But I understand

1 what it takes to get us all here. So I'm at the
2 pleasure of the Court, and can go either way.

3 THE COURT: Well, I've read the motion.
4 You know, I'm reluctant to say much without having
5 the Government filing a response. But I've read the
6 motion. I do think the Government is going to need
7 to take a hard look at this one. Because, if what
8 the situation is, as Mr. Villa has pointed out, I
9 think it is one of those where it may require
10 disclosure. But I'll certainly wait to hear that.

11 MR. BECK: I think we --

12 THE COURT: I guess one thing that could
13 happen is, Mr. Villa could make whatever points he
14 wants to make orally, and then you could file a
15 response. And then I could go ahead and rule at that
16 point, without us getting back together. But
17 that's --

18 MR. BECK: I guess I'll leave it with the
19 Court, Your Honor. I mean, as I said, the United
20 States hasn't prepared for this. We haven't read the
21 brief. We haven't prepared a response to it. That
22 being said, knowing what I know about Your Honor and
23 the Court, I'm sure that we're going to find pretty
24 clear guidance how the Court would rule on this.

25 As I've said, the United States' preference

1 would be not to have argued on it; to respond to it,
2 and to have argument at that point. But we'll leave
3 it to the Court.

4 THE COURT: What do you want to do, Mr.
5 Villa?

6 MR. VILLA: Again, Your Honor, I mean, I
7 find myself sort of a little torn here. I mean,
8 professionally, I understand if I was in the U.S.
9 Attorney's shoes, I'm still within my deadline to
10 respond, I would prefer that opportunity.

11 On the other hand, given the way this case
12 has gone, and the scheduling and things that are
13 required to get us here to court, I'm happy to
14 proceed. I would certainly want the benefit of a
15 reply, regardless of which way the Court proceeds on
16 this. And I know that the Court will, you know, in
17 an oral argument, having reviewed the briefs of all
18 the parties, can probably tell us exactly where you
19 want us to go. And I think you can do it either way.
20 I can do it either way.

21 THE COURT: Let me leave it as what I've
22 said. I think the Government needs to take a hard
23 look at this one. Because if what you're
24 representing the evidence to be, it seems to me this
25 may be one of the situations where the CI has to be

1 disclosed.

2 But let's let the Government do its thing,
3 and we'll go from there.

4 MR. VILLA: Yes, Your Honor.

5 THE COURT: All right. Thank you, Mr.
6 Villa.

7 MR. VILLA: Thank you.

8 THE COURT: Let's take up Document 700.
9 And again, we may be in a position where the
10 Government is not prepared, but I did understand that
11 some things had been -- there had been maybe some --
12 y'all had been discussing this during the day, and
13 may have worked something out. Mr. Benjamin?

14 MR. BENJAMIN: Yes, Your Honor. I did have
15 a discussion with the prosecution at the break. I
16 don't know as it's necessarily fair to say we've
17 worked something out. But what occurred that formed
18 the basis for my filing of Document 700 has happened.
19 It's not something that we can go back and change.
20 The prosecution -- I think I'll refer to them as the
21 team -- they -- I don't know what the actual title
22 is, but they've told me that they're not in
23 possession of the documents. So at this point in
24 time, I think we can wait on that until they've
25 briefed it, and the Court has set the matter for a

1 hearing.

2 The only thing that I would ask -- and I
3 think the Court has the inherent ability to do this
4 today, because in Document 299, Judge Gonzales, when
5 he was presiding over this case, and I think the
6 order, the protective order as well, that I
7 referenced in 589, I believe that the intent for
8 those was for the Government, if it's seeking to
9 invade -- and that's my position, Your Honor, the
10 attorney-client relationship -- which is what I think
11 they did when they raided Mr. Gallegos' cell at
12 Otero -- I think they need to come to this Court, who
13 is aware of the posture in the case, the facts in the
14 case and the many facets that this case has, as
15 opposed to filing a warrant in a separate cause
16 number, and that would be the only concern that I
17 would ask the Court to at least consider today.

18 THE COURT: Is there a way that maybe we
19 could just make sure that, if you're going to seek a
20 search warrant, rather than it coming to me,
21 necessarily -- particularly, if I'm going to have to
22 review it down the road -- I'm wondering if we could
23 just get a commitment from the Government that, if
24 you go to a magistrate judge for a warrant, you'll
25 fully advise them about the -- where this case

1 stands. I mean, I don't know if there is any real
2 question about it.

3 What would you like? I know you were
4 saying that you were concerned that the magistrate
5 judge had been misled. What is it that you would
6 want the Government to tell the magistrate judge to
7 avoid that situation?

8 MR. BENJAMIN: Your Honor, I think being
9 asked the question the way that's asked, that a
10 search would be conducted. If a taint team was used,
11 a member of the prosecution team would not be present
12 in the facility that was being searched. That's one
13 of the biggest concerns I have here, is it appears
14 that Special Agent -- I don't believe his name --
15 it's Acee, but Bryan Acee is listed on the return --
16 I don't know why he needed to be present in the
17 facility at all, if in fact, he was. But I think
18 that there has to be some kind of full disclosure as
19 to what the basis of that is, and what the entire
20 case posture is, not to mention, essentially, some
21 form of heightened reasoning. And I don't want to
22 get into the merits of the affidavit, Your Honor.
23 But my issue is the affidavit in this case.

24 THE COURT: And what is it that you would
25 want the Government to tell the magistrate judge?

1 MR. BENJAMIN: Specifics, articulable
2 factual specifics regarding what the danger and the
3 issues are, Your Honor.

4 I was not given a copy of this affidavit.
5 This affidavit wasn't -- essentially, didn't contain
6 sensitive information that was being protected. It
7 simply was vague, and didn't provide notice. And so
8 I think that, if they're going to invade something as
9 protected as a Sixth Amendment right to counsel, they
10 need to have very, very, very articulable facts,
11 which if they have, they have. But I think that's
12 something that the magistrate needs to be in a
13 position that's a lot different than a tracking
14 warrant or something else that they usually approach
15 a magistrate for, Your Honor.

16 THE COURT: What relief do you want either
17 today, or if we're going to defer this down the road?
18 What is it that you want from this Court?

19 MR. BENJAMIN: From this Court, Your Honor,
20 I want enforcement of Order 299, which was that they
21 won't invade in the future. And the Court said --
22 and I understand why the Court doesn't want the
23 Government approaching it specifically regarding
24 that. But I want -- and I'll fashion language as to
25 what the specifics should be of that relief -- but

1 that there is very specific language. If they're
2 going to invade something like my client's cell and
3 seize attorney-client privilege, I'd like to be
4 notified immediately after the search has occurred,
5 and not find out because it's published in the
6 Albuquerque newspaper. And I'd also like to then be
7 told that the materials are being reviewed, or where
8 they're being reviewed, or where they're being
9 stored. I believe those are my materials. They may
10 be being held, but I don't believe I have full
11 accountability of those materials. So I think those
12 are reasonable requests, and I think those are
13 something that I'm entitled to, and Mr. Gallegos,
14 more importantly, is entitled to.

15 THE COURT: Ms. Armijo?

16 MS. ARMIJO: I think we're arguing the
17 motion. I thought we were going to put it off for a
18 little bit, and I thought that we had agreed.

19 The only thing that Mr. Benjamin had told
20 us at the break was that, as long as we agreed -- we
21 being the prosecution team here at this table -- had
22 not seen any of the documents. I explained to him
23 how the taint team worked, and everything else, and
24 that we had not seen it. And that Special Agent Acee
25 was not at the facilities that were searched, and had

1 nothing to do with them. The only thing that he was
2 in was that he knows documents were obtained, so he
3 could put it on the return of the search warrant,
4 which had to be done in a timely manner.

5 So that was my understanding as to all that
6 we were going to be doing today.

7 He's now argued and wants relief from the
8 Court --

9 THE COURT: Well, that's partly because I
10 keep asking him questions.

11 MS. ARMIJO: And part of the problem --

12 THE COURT: But if that's -- if the thing
13 that has been put in place is sufficient for the day,
14 does that work for you? And then I hear what you're
15 saying, Ms. Armijo, is you want to respond to this
16 motion.

17 MS. ARMIJO: Yes, Your Honor, because there
18 are so many other different issues. For instance,
19 Judge Gonzales put that in, not in reference to
20 further crimes, but in reference to things which --
21 they had concerns of mental health experts, which
22 they believe the United States didn't have a right to
23 know. Things like that. I don't think Judge
24 Gonzales was going to -- and Judge Gonzales wanted us
25 to give things ex parte, which I know Your Honor is

1 not in favor of. Judge Gonzales was.

2 THE COURT: I'm not really --

3 MS. ARMIJO: So that's a completely
4 different issue.

5 THE COURT: Well, let me ask Mr. Benjamin.
6 Given what Ms. Armijo said, does that take care of
7 you for today? Does that freeze things enough to let
8 them brief it and come back and argue it?

9 MR. BENJAMIN: Yes, Your Honor.

10 THE COURT: Does that work then, for you,
11 Ms. Armijo?

12 MS. ARMIJO: Yes, Your Honor. Thank you.

13 (A discussion was held off the record.)

14 THE COURT: All right. Here's what I'm
15 inclined to do, but I'll listen to it. I've got two
16 attorney issues I need to resolve. I was inclined to
17 let everybody go except the attorneys and the
18 Government to work out those attorney issues.

19 Nobody has asked for a CJA meeting, so I
20 don't have everybody in place to try to do one. So
21 unless somebody has something real urgent on CJA, I'd
22 be inclined not to do anything on that score.

23 We do have an issue on the motion to
24 continue this trial, but it sounds to me like that
25 may take care of itself. So I'm not inclined to

1 argue that. So after I hear what Ms. Harbour-Valdez
2 says, I'm inclined to let everybody go, and then the
3 attorneys that I need to deal with on the two
4 defendants with the attorney issues, deal with those.
5 So think about that for a moment.

6 Ms. Harbour-Valdez?

7 MS. HARBOUR-VALDEZ: Your Honor, there was
8 just one issue that we had regarding CJA matters. It
9 was just a simple question, and I can ask Ms. Wild,
10 if you like, and perhaps, we don't all need to stay.

11 THE COURT: Is it something you can just
12 ask right this minute? I mean, does it need --

13 MS. HARBOUR-VALDEZ: I don't know that I
14 feel comfortable asking it.

15 THE COURT: Okay. All right. Fair enough.

16 Okay. Well, after it's over, if we can
17 give you that guidance here, then we'll try to do
18 that.

19 Mr. Villa?

20 MR. VILLA: Your Honor, if I may. You
21 referred to the motion to continue that may take care
22 of itself. And I guess I just don't know why you
23 referred to that. I filed a motion to vacate the
24 March trial setting. I know the Court just entered
25 the order officially vacating the previous trial

1 setting, and setting the March trial setting. And I
2 don't know if that's the motion you're referring to.

3 THE COURT: No, there is another motion,
4 isn't there?

5 THE CLERK: It's his motion, it's the one
6 he's referring to.

7 MR. VILLA: So I filed the motion to
8 vacate. The Government had opposed. There wasn't a
9 response. I filed a notice of completion of
10 briefing. So that's still outstanding.

11 THE COURT: Well, let me deal with -- let
12 me see if that can be worked out. The Government has
13 given their position. And if the people in that
14 other case don't oppose -- it doesn't look like
15 anybody opposes this one.

16 Are you still on the phone, Mr. Mitchell?
17 Do you have your mute button on, Mr. Mitchell? Are
18 you there, Mr. Mitchell?

19 MR. MITCHELL: I am, Your Honor. I had the
20 mute button on. Sorry about that.

21 THE COURT: You don't oppose this motion,
22 do you?

23 MR. MITCHELL: I do not.

24 THE COURT: All right. So let me deal with
25 the parties in the other case, and see if they oppose

1 that. And if they don't, and it looks like there is
2 no opposition here, we can get it entered.

3 MR. VILLA: Yes, Your Honor.

4 THE COURT: All right. Anything else
5 before -- do the attorneys and parties know who they
6 are?

7 THE CLERK: Yes, they do.

8 THE COURT: Okay. So you know who you are,
9 you have attorney issues.

10 Ms. Armijo?

11 MS. ARMIJO: Your Honor, just briefly. I
12 know that it will resolve itself. There was also a
13 request for a scheduling order.

14 Just real briefly, we, the Government, had
15 worked with Ms. Duncan, and had come up with a plan.
16 But my understanding is that it kind of fell through
17 on the defense side. Maybe, so that we don't have to
18 get together, we can submit dueling scheduling
19 orders, so to speak, for the Court to pick from, so
20 we don't have to get together.

21 THE COURT: Does that sound all right to
22 the defendants? Do y'all want to submit dueling
23 scheduling orders; then I'll --

24 MS. SIRIGNANO: Your Honor, I can address
25 that.

1 THE COURT: All right.

2 MS. SIRIGNANO: Amy Sirignano.

3 I was working with Ms. Duncan on both
4 scheduling orders for this case and the 1613 case.
5 We will be sending our scheduling order, at least in
6 1613, to the Government later today. We do have a
7 dueling scheduling order issue in this matter. So if
8 the Court and the Government would like to submit
9 dueling scheduling orders, we'd be happy to submit
10 our proposed.

11 THE COURT: Okay.

12 MS. ARMIJO: And we can try and work it out
13 before we submit two of them, if we can. I know that
14 we sent ours out from what we'd agreed with Ms.
15 Duncan on August 8, and had never heard back. And
16 she kept on apologizing. So I don't know what the
17 issues are. Maybe we can try and resolve it. And if
18 after, let's say, two weeks, we can't, if the Court
19 sets a deadline, if we haven't reached it by then,
20 we'll submit our own orders.

21 THE COURT: Does that work for you,
22 Ms. Sirignano?

23 MS. SIRIGNANO: Absolutely, Your Honor.

24 THE COURT: All right. So we'll set that
25 as a deadline. So if you can't work it out, submit

1 your dueling pretrial orders.

2 Tomorrow a.m.'s hearing only pertains to
3 Defendant Perez, so nobody else needs to be here.

4 Anything else we need to discuss? I'll
5 look to the Government first, the United States.
6 Anything else we need to discuss? Anything else I
7 can do for you?

8 MS. ARMIJO: No, Your Honor.

9 MR. BECK: No, Your Honor, not from the
10 United States.

11 THE COURT: All right. How about from any
12 of the defendants? Mr. Cooper?

13 MR. COOPER: Yes, Your Honor. If I may
14 visit with Ms. Armijo one second?

15 THE COURT: Certainly.

16 (A discussion was held off the record.)

17 THE COURT: Mr. Cooper?

18 MR. COOPER: Thank you, Judge. I just
19 wanted to alert the Court that the lawyers in Counts
20 1 and 2 plan to go down to Las Cruces to view the
21 evidence, the physical evidence, in those two
22 particular counts. And I wanted to make sure that it
23 would be okay for us to photograph that evidence
24 while we were in there. That's one issue.

25 The other --

1 THE COURT: Where will you be? Where will
2 you physically be?

3 MR. COOPER: Your Honor, it's my
4 understanding that we will be either in the U.S.
5 Attorney's Office or in the State Police offices.

6 And the Government tells me they have no
7 objection to us taking photographs of whatever
8 physical evidence is in their possession. They do
9 say, however, that if there is an objection from New
10 Mexico State Police as to us taking photographs, that
11 we might have to be back. I can't imagine that they
12 are going to prohibit us from taking photographs.

13 MS. ARMIJO: I just don't know what their
14 policy is. I know different agencies have different
15 policies. And I haven't had a chance to talk to
16 them. I said we would not oppose if they didn't
17 oppose. So we will stand by whatever theirs is. We
18 can find that out. But again, it was just asked of
19 me, so I don't know the answer to that.

20 THE COURT: But you're going to try to find
21 out before they all go down there?

22 MS. ARMIJO: Yes, absolutely.

23 MR. COOPER: And we've also requested a
24 view of the two pods where Counts 1 and 2 occurred.
25 And I would like to video those two pods as well.

1 And I think the Government -- that's probably a DOC
2 issue.

3 MS. ARMIJO: That is. And I would think
4 that as to those specific pods, I need to talk to
5 them, because there could be security concerns.
6 There is probably inmates there. They probably don't
7 want inmates filmed -- I don't know -- or the
8 housing. I honestly don't know. Or they may say
9 that's fine, but I don't have the answer to that
10 today.

11 THE COURT: All right. But if DOC needs an
12 order, tell them I'd be inclined to grant an order,
13 if that will help things. And if they need an order,
14 then y'all can put one together, and get it in front
15 of me, and tell them I'd be inclined to grant it.

16 MR. COOPER: Thank you, Judge.

17 THE COURT: All right. Thank you, Mr.
18 Cooper.

19 Anyone else? Defendants have anything else
20 we need to discuss? Anything else I can do for you?

21 All right. I appreciate the presentations
22 and hard work. I'll try to get these opinions out to
23 you to.

24 Counsel and defendants that have attorney
25 issues, be sure and stay, and we'll see if we can get

1 those done this afternoon.

2 (The Court was in recess while defendants
3 and their counsel exited the courtroom.)
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

SANTA FE OFFICE
119 East Marcy, Suite 110
Santa Fe, NM 87501
(505) 989-4949
FAX (505) 820-6349



MAIN OFFICE
201 Third NW, Suite 1630
Albuquerque, NM 87102
(505) 843-9494
FAX (505) 843-9492
1-800-669-9492
e-mail: info@litsupport.com


C-E-R-T-I-F-I-C-A-T-E

UNITED STATES OF AMERICA

DISTRICT OF NEW MEXICO

I, Jennifer Bean, FAPR, RDR, CRR, RMR, CCR,
Official Court Reporter for the State of New Mexico,
do hereby certify that the foregoing pages constitute
a true transcript of proceedings had before the said
Court, held in the District of New Mexico, in the
matter therein stated.

In testimony whereof, I have hereunto set my
hand on October 14, 2016.



Jennifer Bean, FAPR, RMR-RDR-CCR
Certified Realtime Reporter
United States Court Reporter
NM CCR #94
333 Lomas, Northwest
Albuquerque, New Mexico 87102
Phone: (505) 348-2283
Fax: (505) 843-9492

SANTA FE OFFICE
119 East Marcy, Suite 110
Santa Fe, NM 87501
(505) 989-4949
FAX (505) 820-6349

BEAN
& ASSOCIATES, Inc.
PROFESSIONAL COURT
REPORTING SERVICE

MAIN OFFICE
201 Third NW, Suite 1630
Albuquerque, NM 87102
(505) 843-9494
FAX (505) 843-9492
1-800-669-9492
e-mail: info@litsupport.com